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USER FEES FOR PORTS AND WATERWAYS

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HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

SEPTEMBER 10, 1985

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PORT AND WATERWAY USER FEES

TUESDAY, SEPTEMBER 10, 1985

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to notice, at 2:04 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Bob Packwood (chairman) presiding.

Present: Senators Packwood, Heinz, Grassley, Bentsen, Matsunaga, Moynihan, Bradley, and Mitchell.

Also present: Senator Mark Hatfield.

[The press release announcing the hearing, statements of Senators Heinz and Bentsen and a report by the Joint Committee on Taxation follow:]

[Press Release No. 85-69, Aug. 9, 1985]

FINANCE COMMITTEE SETS HEARING ON PORT, WATERWAY USER FEES

The Senate Committee on Finance will hold a hearing on establishing a system of user fees for our nation's ports and waterways on Tuesday, September 10, 1985, Committee Chairman Bob Packwood (R-Oregon) announced today.

The Full Committee hearing will begin at 2:00 p.m. in Room SD-215 of the Dirksen Senate Office Building in Washington. D.C. Senator Packwood will preside.

On August 1, 1985, the Senate Committee on Environment and Public Works reported S. 1576, a bill authorizing the Secretary of the Army to construct various harbor and river improvement projects. The Finance Committee hearing will focus on the creation of a user fee system to generate funds to contribute to the cost of such projects.

STATEMENT BY SENATOR JOHN HEINZ, PORT AND INLAND USER FEE LEGISLATION

Mr. Chairman, I would like to speak briefly this afternoon about the user fee legislation pending before the committee today, and generally about the importance of our navigation system to the economy of the nation and to my state of Pennsylvania.

First, I would like to commend both the Finance Committee and the Environment and Public Works Committee for acting on the Water Resources Development Act of 1985. This bill authorizes projects that are of critical importance to our aging public works facilities that enable the movement of waterborne commerce. This type of commerce is essential to our economy as it provides the only real source of price competition for railroads on bulk commodities. Waterborne commerce is the cheapest and most energy efficient mode of commercial transportation. Modernization of ports, locks and dams also has significant implications for American manufacturers, agricultural interests and our trade position. With more efficient facilities that are able to accommodate the larger vessels in use today, our industries and farmers will be better able to compete both at home and abroad.

In addition, these projects provide employment and economic activity for many of our nation's cities that are dependent on water transportation as a source of income. In Pittsburgh, PA, for example, over 73 million tons of cargo are transported each year. In the state of Pennsylvania, materials moved by water accounted for

$8.5 billion of the total sales value in 1980. I would also like to say that this bill is the product of many years of hard work among the interested parties to authorize water projects. For this reason, I have decided to support the compromises that have been reached with the Administration on port and inland user charges.

I look forward to hearing from our witnesses today on ways in which this legislation will impact their industries, and on ways in which we can work with them to refine this legislation to ensure smooth implementation.

STATEMENT OF SENATOR LLOYD BENTSEN

Mr. Chairman, I am pleased that the Finance Committee has scheduled hearings on the revenue portion of the Water Resources Development Act in such an expeditious fashion. This measure was reported by the Committee on Environment and Public Works on August 1. I have the pleasure of serving as ranking minority member on that Committee. In that capacity, I was very active in the development of S. 1567, particularly in the portions relating to port development.

I would like to briefly refer to the background of Title VIII, which is being considered by the Finance Committee this afternoon. In the course of Senate floor consideration of the FY 1985 supplemental appropriations bill last June, an impasse was reached with regard to the inclusion of certain Corps of Engineers water projects in that package. After negotiations between key Republican Senators and the Office of Management and Budget, it was agreed to include those projects in the bill with the proviso that cost sharing and user charge legislation be developed by the appropriate committees in a timely fashion.

With the understanding that revenue measures are within the jurisdiction of the Committee on Finance, the Committee on Environment and Public Works worked through the month of July to report a bill which addresses a broad spectrum of water resources policy issues and projects. S. 1567 is the result of those deliberations.

With regard to Title VIII of the bill, the Committee on Environment and Public Works incorporated the essence of the agreement reached in June, as laid out on the Senate floor by Senator Dole on June 21, 1985. I would like a copy of that colloquoy to be included in the hearing record at the conclusion of my remarks, Mr. Chairman.

The principal provisions of Title VIII, therefore, are the doubling of the existing inland waterways fuel tax, calculated to collect 50 percent of the funds needed to construct new inland commercial navigation facilities, and the imposition of a national uniform ad valorem tax of 0.04 percent on the value of commercial cargo loaded or unloaded from commercial vessels using U.S. harbors. The latter is expected to raise enough revenues to finance up to 40 percent of commercial harbor operation and maintenance.

Title VIII is now before the Finance Committee. This Committee is not bound by the explicit provisions of the existing title. It is my understanding that the Administration will insist on cost recovery of 50 percent of new inland port construction and up to 40 percent of harbor operation and maintenance. The exact method of revenue collection is not set in concrete.

I look forward to this hearing and I anticipate working closely with the other members of the Finance Committee in the development of a fair, workable revenue measure which will raise the revenues needed to continue the commercial waterway transportation program which has been the backbone of this country. We must at the same time assure the continued viability of our ports and harbors, with perhaps particular attention to the effect of additional costs on this nation's competitiveness in the world market.

REVENUE-RELATED PROVISIONS OF S. 1567
(WATER RESOURCES DEVELOPMENT ACT OF 1985)

Scheduled for a Hearing
Before the
COMMITTEE ON FINANCE
on September 10, 1985

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION
September 9, 1985
JCX-18-85

INTRODUCTION

The Committee on Finance has scheduled a public hearing on September 10, 1985, on the revenue-related provisions of S. 1567 (Water Resources Development Act of 1985). S. 1567 was reported by the Senate Committee on Environment and Public Works on August 1, 1985 (S. Rep. No. 99-126).

The first part of this document[1] describes the provisions of S. 1567 relating to the Inland Waterways Trust Fund. The second part describes the revenue-related provisions of S. 1567 concerning harbors and port development.

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[1] This document may be cited as follows: Joint Committee on Taxation, Revenue-Related Provisions of S. 1567 (Water Resources Development Act of 1985) (JCX-18-85), September 9, 1985.

I. INLAND WATERWAYS

Present Law and Background

In general, Federal expenditures for construction, operation, and maintenance costs of U.S. waterways have been financed from general revenues, rather than from fees or taxes imposed on navigation users. In the Inland Waterways Revenue Act of 1978, however, Congress imposed an inland waterways fuel excise tax, and provided for transfer of these tax revenues to an Inland Waterways Trust Fund. Amounts in the Trust Fund are available, as provided by authorization and appropriation acts, for making construction and rehabilitation expenditures for navigation on the specified waterways the commercial use of which is subject to the fuel excise tax.

The fuel tax is imposed on diesel and other liquid fuels used by commercial cargo vessels on 26 designated inland or intracoastal waterways of the United States (Code sec. 4042). Included among the specified waterways are the Mississippi River upstream from Baton Rouge, the Mississippi's tributaries, and the Gulf and Atlantic Intracoastal Waterways. The tax does not apply to fuel used by deep-draft ocean-going vessels, recreational vessels, or noncargo vessels such as passenger vessels and fishing boats.

The present tax rate of 8 cents per gallon is scheduled to increase to 10 cents per gallon on October 1, 1985. (The tax was originally enacted at 4 cents per gallon for the period October 1, 1980 through September 30, 1981, and 6 cents per gallon for the period October 1, 1981 through September 30, 1983.)

Administration Proposal

The Administration's proposed budget for fiscal year 1986 anticipated that legislation would be enacted imposing new navigation user fees to recover a larger portion of the Federal expenses of operation, maintenance, and construction relating to the Nation's inland waterways.[2] In addition, the budget recommended that beneficiaries of Federal water resource projects pay a greater share of project costs through increased non-Federal financing.

In June 1985, the Administration announced an agreement[3] with the Senate Republican leadership for a revised inland waterways financing proposal. The revised proposal would provide for an increase in the existing inland waterway fuel tax of one cent per year beginning January 1, 1988, until the tax rate reached 20 cents per gallon on January 1, 1997. Also, 50 percent of the cost of new inland navigational lock and dam construction projects would be financed from the Inland Waterways Trust Fund.

Status of Inland Waterway Trust Fund

The following table shows the budget status of the Inland Waterway Trust Fund, as initially proposed by the Administration in its fiscal year 1986 budget.

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[2] The initial Administration proposal (contained in S. 967, introduced by request) would have imposed a new user "fee" (under the Code) on commercial vessels using inland waterways. The fee (to be collected as if it were a tax under chapter 36 of the Code) would have been 0.15 cents (15 cents per $100, or 15 mils) per ton-mile, beginning October 1, 1985. Exemptions would be provided for (1) the U.S. Government, (2) State and local governments, (3) foreign nations or corporations owned by a foreign nation, and (4) dredging activities. Under S. 967, revenues from this new user fee would have been deposited in the Inland Waterways Trust Fund, and would have been in addition to the existing waterway diesel fuel excise tax.

[3] See 131 Cong. Rec. S8631-8633 (daily ed. June 21, 1985), which includes a June 20, 1985, letter from the Office of Management and Budget. See also Administration testimony before the House Committee on Ways and Means, September 5, 1985 (joint statement of Robert K. Dawson, Acting Assistant Secretary of the Army (Civil Works), and Richard A. Abbey, Chief Counsel, U.S. Customs Service).

Inland Waterways Trust Fund, Amounts Available for Appropriation, Fiscal Years 1984-1986 ($ millions)

	Fiscal years		
	1984 (actual)	1985 (est.)	1986 (est.)
Unappropriated balance, start of year	91.5	133.1	192.1
Receipts			
Inland waterway fuel tax	38.5	40.0	51.0
Interest and profits on investments	3.1	19.0	25.0
User fees (new legislative proposal, as initially proposed)	---	---	196.0
Total available for appropriation	133.1	192.1	464.1
Appropriation (as initially proposed for 1986)			196.0
Unappropriated balance, end of year	133.1	192.1	268.1

S. 1567, as Reported by Committee on Environment and Public Works

S. 1567, as reported by the Senate Committee on Environment and Public Works (S. Rep. No. 99-126, August 1, 1985), provides for one-half financing of six inland waterway navigational construction projects[4] from the Inland Waterways Trust Fund. The total estimated cost of the six projects is $977.3 million.

Title VIII of S. 1567 would increase the present-law inland waterway diesel fuel excise tax from the currently scheduled 10 cents per gallon (beginning October 1, 1985) by one cent per gallon each year on January 1, 1988-1997, until reaching 20 cents per gallon for 1997 and thereafter.

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[4] The six projects are: Oliver Lock and Dam, Black Warrior-Tombigbee River, Ala. ($147.2 million); Gallipolis Locks and Dam Replacement, Ohio River, Oh. and W. Va. ($256 million); Lock and Dam 7 Replacement, Monongahela River, Pa. ($95.1 million); Lock and Dam 8 Replacement, Monongahela River, Pa. ($68 million); Lock and Dam 26, Mississippi River, Alton, Ill. and Mo. ($220 million); and Bonneville Lock and Dam, Columbia River and Tributaries, Ore. and Wash. ($191 million).

The bill also would amend P.L. 95-502 to add a portion of the Tennessee-Tombigbee Waterway (from its confluence with the Tennessee River to its confluence with the Warrior River at Demoplis, Ala.) to the inland waterways the use of which is subject to the inland waterway diesel fuel excise tax. Further, the bill would prohibit expenditure of any Trust Fund monies for harbor or harbor components of the waterway system.

Other Congressional Action

H.R. 6, as reported by the House Committee on Public Works and Transportation (H. Rep. No. 99-251, Part 1; August 1, 1985), does not impose new taxes or increase existing tax rates in order to finance costs of inland waterways. The bill would amend section 206 of the Inland Waterways Act of 1978 (P.L. 95-502) to add the following portion of the Tennessee-Tombigbee Waterway to those waterways the use of which is subject to the present-law inland waterway diesel fuel excise tax: From Pickwick Pool on the Tennessee River at RM 215 to Demopolis, Ala., on the Tombigbee River at RM 215.4.

Title II of H.R. 6 specifies seven inland waterway navigational projects[5] to receive partial financing from the Inland Waterways Trust Fund. The total estimated cost of these seven projects is $1,151 million. The bill instructs that these projects are to be completed within seven years after the funds are first appropriated for the project. One-third of such construction costs[6] are to be paid only from Trust Fund appropriated monies. The remaining two-thirds is to be appropriated from the general fund of the Treasury.

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[5] These are the same projects as in S. 1567 (see note 4, *supra*), plus the Winfield Locks and Dam, Kanawha River, W. Va., is included in H.R. 6.

[6] In addition, H.R. 6 provides Trust Fund financing for one-sixth of the costs of required relocations of oil, natural gas or other pipeline, electric transmission cable or line, communications cable or line, and related facilities. One-third of such relocation costs are to be paid only from the general fund, with the remaining one-half to be paid by the owner of the relocated pipeline, cable, line, or facility.

II. HARBORS AND PORT DEVELOPMENT

Present Law and Background

Expenditures for harbors and ports

Federal expenditures for harbors and port development historically have been financed from general revenues. No user taxes or fees have been imposed for these specific expenditures. (See above discussion in Part I concerning specific user taxes imposed for certain costs of the inland and intracoastal waterways.)

Customs duties

Customs duties generally have been deposited in the general fund of the Treasury, and not dedicated to specific expenditure purposes. However, in 1980 (title III of P.L. 96-451), the Reforestation Trust Fund was established, and receipts from import duties on plywood and lumber were transferred to this Trust Fund of up to $30 million per year for six fiscal years (1980-1985). Thus, import duties on plywood and lumber are scheduled to revert to the general fund beginning October 1, 1985.

Administration Proposal

The Administration's initial proposal (contained in S. 534, introduced by request) did not include specific Federal user taxes or fees for financing harbors and port development and maintenance. S. 534 did include requirements for "cost sharing" by non-Federal interests for such projects.

In June 1985, the Administration announced an agreement[7] with the Senate Republican leadership of a proposal for a 0.04 percent (4 mils, or 4 cents per $100) *ad valorem* excise tax on cargo loaded and unloaded at U.S. harbors to recover up to 40 percent of Corps of Engineers harbor operations and maintenance expenditures. Monies raised by this new tax would be deposited in a newly established trust fund for such expenditures. This tax would be in addition to certain cost-sharing requirements for non-Federal contributions to project costs.

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[7] See note 3, *supra*.

S. 1567, as Reported by the Committee on Environment and Public Works

Harbor maintenance fee and trust fund

S. 1567 (Title VIII), as reported on August 1 by the Senate Committee on Environment and Public Works, would impose a new 0.04 percent "fee" (4 cents per $100) on the value of cargo[8] loaded and unloaded at commercial harbors in the U.S., including Great Lakes harbors. In addition, a "fee" of $0.005 (one-half cent) per net registered ton would be imposed on the use of any commercial harbor (including Great Lakes) for a purpose other than loading or unloading cargo (including convenience, bunkering, refitting or repair). This latter fee could be imposed no more than three times on a vessel in a fiscal year.

Revenues from these fees would be deposited in a new Harbor Maintenance Trust Fund, to be used to finance up to 40 percent of the Federal costs of commercial harbor operation and maintenance (including Great Lakes navigation improvements), and for 100 percent of annual eligible operation and maintenance costs of the St. Lawrence Seaway operated by the St. Lawrence Seaway Development Corporation.[9]

Payment of fee; trust fund management

Payment of fee.--The fees under S. 1567 are to be paid by the owner of the cargo or agent. The fees are to be collected, except for the Great Lakes, at the point of loading for foreign-bound cargo, and at the point of unloading for all other cargo. Within the Great Lakes, the fees are to be collected at points designated by the Secretary of the Treasury. The method of administering the fee is left to the discretion of the Secretary of the Treasury. The committee report (p. 10) indicates that the U.S. Customs Service appears to be a logical and suitable collection agency, but this is not mandated.

Trust Fund management.--The Trust Fund is to be managed by the Secretary of the Treasury, who is to report annually to Congress on the operation and status of the Trust Fund during the preceding fiscal year and on the expected operation and status of the Trust Fund during the following three fiscal years.

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[8] Unprocessed fish and aquatic animals fresh caught during a shipping voyage are to be exempt from the fee.

[9] To the extent that the charge or toll levied on a vessel for use of the St. Lawrence Seaway payable to or on behalf of the U.S. is in addition to or exceeds the fee imposed by S. 1567, the collection of the U.S. Seaway charge or toll is waived. Also, the St. Lawrence Seaway Corporation is to remit to the Treasury all revenues from seaway charges or tolls.

Non-Federal cost-sharing and fees

Cost-sharing.--S. 1567 would require proportionate cost-sharing by non-Federal interests for construction costs of any new harbor improvement project, as indicated below, plus payment of an additional 10 percent of construction costs, with interest, over a period of up to 30 years after completion.

Type and depth of port	Non-Federal cost share
1. Shallow ports: up to 20 feet	10% of cost of construction.
2. General cargo ports: 20-45 feet	10% of cost of construction for 20 feet or less, and 25% of cost of portion at depth of 20-45 feet.
3. Deep ports: more than 45 feet	10%, up to 20 feet; 25%, 20-45 feet; and 50% of cost of portion at depth of more than 45 feet.

Also, the bill would require that a non-Federal sponsor agree to pay 50 percent of the costs of studies of proposed commercial harbor projects before the Federal agency would initiate a study.

Non-Federal authority to collect fees.--S. 1567 (Title VI) would authorize the non-Federal sponsor of a harbor construction project to collect fees to cover its share of the project's costs, plus 50 percent of the incremental maintenance costs at below 45 feet for a harbor. (The non-Federal sponsor would be responsible for the 50-percent maintenance costs at below 45 feet.)

Such fees are to reflect to a reasonable degree the benefits provided to a particular class or type of vessel, and are not to be imposed on vessels owned or operated by the U.S. Government, State or local governments, foreign governments or foreign government corporation, vessels engaged in dredging activities or in intraport movements, and vessels with design drafts of 14 feet or less when utilizing projects (harbors) of from 20-45 feet and deeper than 45 feet.

Other Congressional Action

General tax and trust fund provisions

As reported by the House Committee on Public Works and Transportation on August 1, 1985, H.R. 6 (Title XIII) would establish a new Port Infrastructure Development and Improvement Trust Fund. The Trust Fund would receive revenues from a new 0.04 percent tax (as imposed by the bill) on the value of cargo[10] loaded or unloaded at U.S. ports, plus an amount equal to customs duties collected each year which when combined with revenues from the cargo tax would total $1 billion. These provisions would be effective beginning on October 1, 1985 (fiscal year 1986).

Amounts in the Trust Fund would be available for planning (including feasibility studies), construction, operation, and maintenance costs of authorized port projects and St. Lawrence Seaway port projects, as well as for relocation of utilities, structures and other improvements necessary for construction, operation and maintenance of port projects.

Payment of cargo tax; trust fund management

Payment of cargo tax.--The cargo tax imposed under H.R. 6 is to be paid by the importer in the case of cargo imported into the customs territory of the U.S., by the exporter in the case of cargo exported from the U.S., and by the shipper in the case of any other cargo loaded on a vessel at a port in the U.S. (i.e., shipping between U.S. ports). The tax is to be paid only once with respect to any cargo; for example, goods transported between U.S. ports would be taxed only once.

Trust fund management.--The Secretary of the Treasury is to manage the Trust Fund and to report to the Congress each year on the financial condition and operation of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next five fiscal years.

Non-Federal fees

Deep-draft port fees.--H.R. 6 (Title I) gives the consent of Congress (under clauses 2 and 3 of section 10 of Article I of the Constitution) to the levy by a non-Federal interest of certain cargo tonnage fees on vessels entering a deep-draft port (i.e., only on vessels requiring a channel with a depth of more than 45 feet).

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[10] The Committee on Public Works and Transportation report indicates that the tax is not to be imposed on the initial landing of U.S. harvested fish and seafood, but that fish and seafood imported or exported are to be subject to the tax.

The tonnage fees may only be levied to (1) reimburse the Federal Government for the non-Federal share of construction and operation and maintenance costs of a deep-draft port navigation project authorized under Title I of the bill, or (2) provide emergency response services in the port (except tonnage fees may not be levied for (2) if they cease to be levied for (1)). Such fees may not be levied on a vessel not engaged in commercial service owned and operated by the United States, by a State or political subdivision, or by another nation or subdivision.

H.R. 6 also provides for the Comptroller General of the U.S. (GAO) to carry out periodic audits of the operations of non-Federal interests that elect to levy such port tonnage fees, and to report and make recommendations to the Congress with respect to the compliance of the non-Federal interests with these requirements.

Federal guarantees of non-Federal obligations.--Title I of H.R. 6 also authorizes a Federal guarantee of the payment of the interest on, and the unpaid balance of the principal of (up to a $1 billion limit), any obligation issued by a non-Federal interest to finance a navigation project authorized for a port by Title I or any other subsequent law that is subject to a requirement for non-Federal contribution to the cost. A guarantee fee is authorized of not less than 0.25 percent per year of the average principal amount of an outstanding guaranteed obligation. Such fees are to be deposited in a special fund, the "Federal Port Navigation Project Financing Fund", for use in payment of defaults of such non-Federal obligations.

Non-Federal shares of port costs.--Title I of H.R. 6 provides for non-Federal cost-sharing according to the depth of the port, as follows:

Type and depth of port	Non-Federal cost share
1. Shallow ports: 14-20 feet	10% of cost of construction.
2. General cargo ports: 20-45 feet	10% of cost of construction for 14-20 feet or less, and 25% of cost of portion at depth of 20-45 feet.
3. Deep ports: more than 45 feet	10%, up to 20 feet; 25%, 20-45 feet; and 50% of cost of portion at depth of more than 45 feet.

For any port, the non-Federal interests must also provide necessary lands, easements, rights of way, and dredged spoil disposal areas, but only to the extent that such costs do not exceed five percent of the project costs. The non-Federal interests must also construct items such as berthing areas and access channels (which count towards the non-Federal share).

The **Chairman**. This is the end, I hope, of what has been a long trail, for which my colleague, Senator Hatfield, deserves as much praise as the rest of the Senate and perhaps the rest of the Congress put together. For years, we have been deadlocked over water projects, whether those be port projects or river projects or dams, and the issue of user fees. There has been a tremendous split in this country between the large coastal ports—the New Yorks and the Los Angeleses of the world—and the smaller upriver ports. It took a carefully crafted compromise, for which Senator Hatfield was the leader, to work out an agreement between all of the ports of this country—coastal and river, large and small—on which they, by and large, agree.

What we have in this bill, because of the compromise, is the start of some projects that have been very dear to many of us, including Senator Hatfield and myself—the Bonneville Lock on the Columbia River.

The Columbia River is a navigable river from its mouth at Astoria to Lewiston, ID. There are a number of dams and locks along the way, but the Bonneville Lock is the oldest and the smallest, and it is the last downriver lock. Consequently, it has been a bottleneck for years and years, impinging seriously on Oregon's foreign trade. With the widening of that lock, we can look forward in Oregon and in the Northwest to significantly expanded foreign trade. That would not be possible but for the fact that a compromise was reached on the issue of user fees.

I am delighted we are having this hearing today. Ironically, the bill is not yet before us; it has been reported by the Environment and Public Works Committee and is on the Senate Calendar desk. We will have it; there is no problem. I am hoping we will do our work expeditiously, reporting this bill out so that we can break a logjam that has existed for longer than many of the members of this committee have been in the Senate.

We will hear from Senator Matsunaga next, and then Senator Mitchell.

Senator **Matsunaga**. I have no questions, Mr. Chairman.

Senator **Mitchell**. Thank you very much, Mr. Chairman. I would like to make a brief statement, and then I apologize to Senator Hatfield and the other witnesses in advance: I have to go to another meeting. This is an important issue to me, and I do intend to participate in the hearing tomorrow, specifically the administration witnesses.

Mr. Chairman, it has been many years since Congress enacted comprehensive water resources development legislation. This measure, the Water Resources Development Act of 1985, has many provisions which I support, which are important to me and other members of the committee. And I commend the chairman of the Appropriations Committee and others who have been involved in it to that extent.

I am, however, very deeply concerned about title VIII of this bill, which pertains to the non-Federal cost sharing for the operation and maintenance of federally authorized ports. It is my understanding that this provision is intended to recover up to 40 percent of the nationwide costs for port maintenance by levying an ad valorem tax on cargo. The tax would equal 4 cents for every 100 dollars' worth of cargo being transported. For the reasons I will state shortly, I question the fairness and workability of this tax, and for that reason I voted against this title of the bill when it was considered by the Committee on Environment and Public Works.

The ad valorem tax on ship cargo is being described by its supporters as a user fee to assist the Federal Government in paying for Federal port maintenance. The user fee is generally understood to mean that those "who derive benefit from the use of a facility or service should share in the cost of maintaining that facility or providing that service." Use of that phrase is creating the impression in this case that the tax will therefore be imposed on cargo entering and leaving ports which receive the benefit of Federal dollars. But that is not the case.

Under this bill, the tax would be levied on cargo entering all ports, regardless of whether such ports are federally authorized and therefore eligible for Federal maintenance money. The smallest of fishing villages in Maine and other coastal States would be included.

The tax would also be levied on cargo entering all federally authorized ports, regardless of whether such ports receive any Federal money for port maintenance. Approximately half of the federally authorized ports in Maine, for example, receive no Federal funds for dredging and related activities.

In addition, no allowance is made in the bill for ports that are very near Canada or Mexico and could lose ship traffic to those countries as a result of this tax.

And finally, cargo entering ports whose maintenance costs are very low would be assessed an amount far in excess of 40 percent of those costs. For example, Portland, ME, requires an annual average of about $290,000 for port maintenance. Under this bill, the ad valorem tax on cargo entering Portland would raise over $1 million.

Given indication of how quickly this was put together without thinking through the implications of it, as orignally presented to the Committee on Environment and Public Works, all fish and seafood products would have been taxed. As a result of this, the lobsterman in Maine or the fisherman in Oregon who docks his boat at any fishing village, regardless of whether or not that fishing village was federally authorized or received any Federal funds, would have been required to pay a tax on his catch. He would have been required to do so, despite the fact that his village maintains its dock and harbor entirely with local or State dollars.

The bill, furthermore, provides no direction as to how the tax would have been collected from him or what level of paperwork that would have entailed.

Fortunately, the Environment Committee accepted my amendment to exempt fish and other seafood from the definition of "cargo," but that illustrates the problem with this bill. While that amendment improves the legislation, many problems remain to be corrected.

I look forward to the careful scrutiny that this measure will receive by this Finance Committee and hope that my colleagues will join me in addressing the continuing problems in the legislation, so that ultimately we all can vote for what will be a fair measure.

I thank you, Mr. Chairman.

The **Chairman**. Thank you.

Senator Grassley, do you have an opening statement?

Senator **Grassley**. Mr. Chairman, I have no opening statement.

The **Chairman**. Senator Bentsen.

Senator **Bentsen**. Mr. Chairman, I have an opening statement; but, in deference to our distinguished chairman of the Appropriations Committee, I will put it in the record.

The **Chairman**. We will call on Senator Hatfield, the chairman of the Appropriations Committee, my colleague, the senior Senator from Oregon, my former teacher in college when I was a student and he was a teacher, the Governor when I was in the State legislature, and a close friend for 35 years.

I saw you smile, Mark, when Senator Mitchell said how quickly this came about. This may be a lot of things, but the process we have gone through is not what would normally be described as quick in reaching this compromise.

STATEMENT BY HON. MARK O. HATFIELD, U.S. SENATOR FROM THE STATE OF OREGON

Senator **Hatfield**. Thank you, Mr. Chairman and members of the committee. I am very grateful for the opportunity to be here once again, having testified last year before your committee for and on behalf of user charges as a component of a national omnibus authorization bill.

Mr. Chairman, I would like to have the indulgence of the committee for just one moment, in that Senator Mitchell has raised some very pertinent questions. I understand his problems of schedule; but before he does leave the room, I would like to merely just respond briefly by saying those points that he has made were valid and very legitimate points, and I am delighted to say that in the current draft of the bill, Senator, we have incorporated a number of those points:

No. 1, we have incorporated an exemption for those fishermen that you referred to. They would not be included in this bill.

No. 2, we have exempted all non-Federal authorized and maintained ports.

So we have attempted to meet, in part, some of those points that Senator Mitchell has raised in the past. During the last 5 years, a bipartisan group has met on occasion to discuss these points and other points as well, and during that 5-year period this current bill really has become sort of the product of many minds representing many different kinds of ports and waterway systems.

I also feel that even the current draft, Senator, is not locked in concrete, and certainly there is nothing that is perfection that I have authored. I would like to continue working with you to resolve any of the other problems that may remain.

Mr. Chairman, the whole exercise—I will be very brief in the historic context, but I would merely like to state that when in 1977 President Carter, in January 1977, announced his water project hit list, that brought into focus a long-simmering debate that had erupted from time to time between Eastern Senators and Western

Senators and public-land Senators versus nonpublic-land Senators, relating to various and sundry water development projects.

And then when this administration, when it was first inaugurated in 1981, sent up to the Hill a proposal for water user fees which would have effectively destroyed most of the ports of the West, probably most of the ports of the eastern seaboard and probably a goodly number in the gulf, it again brought into focus the issue of whether costs at such projects as federally developed or federally operated and maintained water projects such as inland navigation and ports should be shared; that is, local groups should share in those costs.

I, from the very beginning, unlike most of my western colleagues, have supported the proposition of cost sharing. I believe, theoretically and doctrinally, it is sound.

But the question always was raised: How do you resolve the differences between those ports where user fees, if they were based on tonnage, pure tonnage, would affect the bulk cargo shipments versus the containerized cargo? You would have—within a port a very distinctive and difficult problem to deal with.

You would have disadvantages in those ports who are export-dependent, as against those ports which are more related to imports. So, you have those distinctions.

The first thing that our bipartisan group did in meeting—I recall that first meeting in Senator Byrd's office—was to reject the administration's proposal of what we have called port-specific fees. That is, each port would be analyzed in its cost-analysis on the matter of what it cost to operate and maintain that port, and then that cost-sharing would be related specifically only to that port; because you have a great variation between a port of Seattle, a port of Portland, a port of San Francisco, a port of Long Beach. And you would have, therefore, a different kind of system or a different kind of fee that would be applied in each and every one, primarily based upon the operation and maintenance differential. Obviously, therefore, it would penalize those ports which had a higher operation of maintenance costs as against those ports which had a lower operation of maintenance costs.

What it effectively would have done, the administration's proposal, would have been to destroy, most of your medium-sized smaller ports. And even if you could, justify that on a cost-analysis of their proposal, it would have been impossible for those few remaining superports to handle all of the cargo and all of the business. In other words, it just could not have happened. We would have ended up with basically three ports on the Pacific coast—Seattle, Oakland/San Francisco, and Los Angeles/Long Beach. And it is just not feasible, not possible, for those three ports to handle all the export or import of the west coast.

Now, the approach that emanated out of our bipartisan group and that I chose to incorporate into the proposal I have made is to develop a nationally uniform system of fees, a single-tier fee base, if you please, on a percentage of the cargo value, an ad valorem type of tax.

I would envision, as the Senator from Maine has indicated, what would be ultimately, let's say as an example, 4 cents per $100, or 40 cents per $1,000 value, and this ad valorem concept would then be equitably balanced between the containerized versus the bulk kind of cargoes. It places all ports on an equal footing and would not diminish the marketability of any product or any commodity. It also treats all coastal ranges of the continental United States equitably—eastern seaboard, gulf, Pacific coast, and Great Lakes.

This fee would be collected through a mechanism agreed to by the administrative agencies. And let me say that, if in a perfect world, it would be my expectation that the shippers would be ultimately responsible for payment of the fee. However, after consultation with colleagues and with the Treasury Department, it is very clear that in certain international transactions the importer and the exporter both should have the ultimate responsibilities for payment to the Customs Service, and under the current practices, as you know, bonded importers are responsible for payment for customs duties and would be responsible for the fee as well.

A similar system would have to be developed for the exporter.

Now, for domestic movements, the only viable point of collection is the actual shipper. He or she is the only source for the necessary information as to determining the value of such cargo to collect the fee, and the system would have to be developed, to assure compliance.

Now, let me indicate again that this proposal is not without problems which could affect navigation-dependent States. And it is not without cost to consumers. But I believe it strikes an appropriate balance between the budget needs of the United States and the economic realities of our own Nation's ports.

Now, Mr. Chairman, let me say that in the past the proposals that I have offered have not included provisions affecting the inland navigation systems, because I felt the current fuel tax was sufficient. As you know, we have established by congressional action an 8-cent-per-gallon diesel fuel tax, building it into a trust fund as we did in the case of the Interstate Highway System. However, in negotiating with OMB over the last period of this year, and particularly on the 1985 supplemental appropriations bill, the Republican leadership agreed to outline a framework for an omnibus water resources bill which would not only include the fee I have just discussed but also additional charges for inland waterway systems. I would ask the committee to seriously evaluate the effects of such new charges on such inland waterway systems, and if the committee agrees to include them, it should backload, in my view, though, the increases into the outyears of the agreement. By that I mean simply that the 8 cents a gallon that we have currently in the so-called Republican Leadership Agreement which was recorded in the Congressional Record in a colloquy, not a part of the appropriations bill but purely as a gentlemen's agreement that we would work for enactment. It would in effect create a 10-cent increase per gallon over a 10-year period. Some were talking about 1 cent per year of 10 years; but the industry has said once you get these new facilities in place it would be far more economical to pay that higher gas or diesel fuel tax once the new facilities were operating. So, you could backload those increases, say making them in the last period of that 10 years of 3 cents, 4 cents, and 5 cents, or whatever combination you wanted to use.

Basically, that should produce about $75 million a year, which would be then the user share, taken from that trust fund, in the cost-sharing arrangement for inland water projects such as the Gallipolis, the Bonneville, and other such inland waterway projects.

Mr. Chairman and members of the committee, I believe it is essential to this committee to expeditiously report this legislation to the Senate for its consideration, because, as you know and as the chairman, Senator Packwood, has indicated, many urgent and necessary projects have been held hostage by both Democratic and Republican administrations because of our inability to address the issue of user fees. The time has come.

I would like to also remind the committee that the House committee had already included these provisions in the House omnibus water project bill; so we are closer to enacting an authorization bill than we have been for over a decade, and that, frankly, is about 15 years that we have not been able to get such a bill out, as the Senator from New York, Senator Moynihan of this committee, well knows, because he has struggled in that area himself for a long while.

So, let us not lose sight of our need to undergird the foundations of our Water Board in Commerce and make our ports and waterways viable into the 21st century.

[Senator Hatfield's written testimony follows:]

PREPARED STATEMENT OF SENATOR MARK HATFIELD

Mr. Chairman, once again we are visiting the issue of user fees for ports and inland waterway navigation. Last Congress, I testified before this Committee about the need to report legislative provisions imposing reasonable user charges for navigation operation and maintenance as a necessary component of an omnibus navigation authorization bill.

We have not had a major authorization in this area for fifteen years. There are many economic and political reasons for this delay, but the resolution of the user fee component is a key element in getting a bill to the floor and passed. The previous administration began this debate over user fees and focused attention on the importance of our nation's waterways. The present administration has adopted the concept of fees and has proposed to expand their potential effect and scope. Unfortunately, their proposals to date would have serious economic implications in significant portions of the country.

Five years ago, I convened a bipartisan group to explore legislative proposals addressing the expectations of the administration for user fees, while taking into account the economic realities of the navigation economy and the users of the nation's waterways. Over that period, I have introduced three separate and distinct proposals that would lay out a framework for acceptable user charges for navigation. S. 865, introduced last Congress, became the template for the legislative language I developed for a new bill this Congress and much of that language has been incorporated in the bill reported by the Environment and Public Works Committee.

We reserved user fees based on tonnage because they disproportionately would affect bulk cargo marketability when compared to their impact on containerized cargo. It also would disadvantage export dependent ports in contrast to import dependent ports. The bipartisan group also rejected a port specific approach to fees (a key component of the administration's proposals), because it would have the effect of disadvantaging ports with higher operation and maintenance costs and could cause consolidation of port facilities to a few "super ports". This could have severe economic implications for scores of communities across the country.

The approach I chose to incorporate into my ports proposal is a nationally uniform, single tier fee based on a percentage of cargo value, I envision a fee of 40¢ per $1,000 value. This "ad valorem" concept equitably balances containerized vs. bulk cargoes, places all ports on equal footing; and, does not affect the marketability of any product or commodity. It also treats all coastal ranges of the continental U.S. in the same manner: East and West Coasts, Great Lakes and Gulf Coast.

I envision this fee to be collected by a mechanism developed through consultation with the administrative agencies and the affected users of our waterway system. In a "perfect world" it would be my expectation that the shipper would be ultimately responsible for payment of the fee. However, (after consultation with the Treasury Department), it is clear that, for international transactions, the importer and exporter should have the ultimate responsibility for payment to the Customs Service. Under current practice, bonded importers are responsible for payment of customs duties and would be responsible for the fee as well. A similar system would have to be developed for export agents. For domestic movements, the only viable point of collection is the actual shipper. He or she is the only source for the necessary information to collect the fee and a system would have to be developed to assure compliance.

This proposal is not without anomalies which could affect navigation dependent states, and it is not without costs to consumers, but I believe it strikes an appropriate balance between the budget needs of the United States and the economic realities of our nation's ports.

Mr. Chairman, in the past my proposals have not included provisions affecting the inland navigation component because I felt the current fuel tax was a sufficient user charge. However, in negotiations with OMB on the 1985 Supplemental Appropriation Bill, the Republican leadership agreed to outline a framework for an omnibus water resources bill which would include the fee I've just discussed and additional charges on the inland system. I would ask the Committee to seriously evaluate the effects of such new charges and if indeed the Committee agrees to include them, it should "backload" the increases into the out years of the agreement.

Mr. Chairman, it is essential that this Committee expeditiously report this legislation to the Senate for its consideration. Many urgent and necessary projects have been held hostage because of our inability to address user fees. The time has come. The appropriate House Committees have included these provisions in the House Omnibus Water project bill, so we are closer to enacting an authorization bill than we have been for over a decade. Let us not lose sight of our need to gird the foundations of our waterborne commerce and make our ports and waterways viable into the 21st Century.

The CHAIRMAN. I don't have a question, but let me congratulate you again on one of the finest works, not just of draftsmanship, but also of intelligent compromise, I have seen since I have been here. I know what you have been through. I have been on the periphery of it, you have been at the center of it. I have not seen a more difficult domestic issue since we have been here. It doesn't involve the passion of the school prayer or similar issues; but, in terms of different sections of the country—coastal ports and upriver ports, exporting farm States versus importing other States—it has been an extraordinarily difficult problem. This problem has been compounded by the difficulties, as you indicated, of two administrations, not unique to this one. I just think it is a marvelous piece of work.

Senator HATFIELD. Senator, I appreciate your kind remarks. I would only say that really we are suffering today. Part of this trade imbalance that we have, that will probably go up to $150 billion this year, in part can be ascribed to the deterioration of our waterway systems.

May I just cite one example? We are losing customers in the Far East today in Asia, primarily in the area of agricultural grain, to Canada and to Australia in part due to the inability to maintain a competitive economic relationship because of the increased costs of delays in our inland waterways.

The Columbia River is one of the major export ports of the West, and the delay at the Bonneville Lock has now gone up to 2 or 3 hours. Waterway transportation just no longer can have that disadvantage out of the West, and we are losing that to Canada. That is but one of many examples we could cite all over this country.

The CHAIRMAN. Senator Matsunaga.

Senator MATSUNAGA. Thank you, Mr. Chairman.

I, too, wish to commend the senior Senator from Oregon for the work he has put into this legislation. But, like my colleague from Maine, I have some serious questions, particularly as to the 0.04-percent ad valorem tax as applied to the insular State and possessions of the United States—that is, Hawaii, Guam, Samoa, et cetera. According to the information I received from the Pacific Basin Development Council, which consists of the Governors of Guam, the American Samoa, and Commonwealth of Northern Mariana Islands and Hawaii, the ad valorem fee would be a tax, in the case of Hawaii for example, equal to 300 percent of the actual expenditures for operation and maintenance now being expended by the Federal Government. At the 40-percent recovery-of-Federal-cost level, the American Pacific Islands would be contributing close to 850 percent of the intended local share. If the annual U.S. Customs duties are included in the national operations and maintenance fund, the Pacific Island region would be taxed at a rate of about 43 times the Federal expenditure.

In your statement you failed to mention the island State of Hawaii or the Pacific Islands. I take it, then, from your opening statement, relative to what can be done in the case of Maine, that you are open to suggestions and even exemptions in case of harshness which would result from the language of the bill as proposed.

Senator HATFIELD. Senator, you are correct. In fact, it is an oversight on my part not to have incorporated a specific reference to the island territories and to the island State of Hawaii, and they will have to be given special consideration and special treatment from the overall concept of this bill. There is no question about that. Staff has already been working on that very specific handling of that specific area.

So, you are quite right; that will be handled in a different way.

Senator MATSUNAGA. Thank you.

The CHAIRMAN. Senator Bentsen.

Senator BENTSEN. Thank you very much, Mr. Chairman.

I must say to the distinguished chairman of the Appropriations Committee, I have been deeply concerned about the conflict between the Environment and Public Works and the Appropriations Committees, and the preservation of the jurisdictions of the appropriate committees. I am hopeful that we have a resolution of that now.

I have the pleasure of being the ranking minority member on the Environment and Public Works Committee. We reported a bill in August, and I am very pleased that the chairman of this committee has moved so expeditiously here in trying to bring Finance Committee consideration about.

When we are talking about title VIII, I think the Senator from Oregon has appropriately stated that it is now before the Finance Committee but we are not locked in on the explicit provisions of that existing title.

What we are looking at here is a doubling of the existing waterways fuel tax, and it will be used to pay 50 percent of the funds needed to construct new inland commercial facilities. And then we are considering an ad valorem tax of four-hundredths of 1 percent to pay a portion of harbor operation and maintenance costs.

We are also looking at a serious problem with regard to the barge industry. Some of them are right on the verge of bankruptcy.

We are deeply concerned with how these taxes might affect our international competitiveness because of the additional costs that result from this bill.

So, I am pleased to be working with the members of the Finance Committee in trying to see if we can come up with a fair, workable revenue measure which is going to raise the kinds of revenues that we need to continue the commercial Inland Waterway Transportation System, which I think has been one of the real backbones of this country, and to keep up the viability of our ports and harbors.

I would agree with the members of the committee who have spoken of the job of the Senator from Oregon. We are very pleased with the work that you have done and the contribution that you have made.

Mark, I don't have really any question at this point, other than to assure you of our wanting to continue to work with you.

Senator **Hatfield**. Thank you, Senator.

May I say that the Senator focuses on a very important part of this whole plan on the inland waterway fee, and that is that there are such economically distressed transportation companies.

In the colloquy that is in the Congressional Record, we incorporated a caveat to deal specifically with those companies. We recommended an exemption or a rebate for those companies that could demonstrate or show that kind of economic distress. We recognize the problem within the industry and the necessity of dealing with it.

Today I have emphasized the importance of possibly backloading that tax, in the sense of getting these companies in a position where they can increase because of the potential increase of business by the improvement of those waterway systems. So that tax would come at the far end of that 10-year period. Because, as I say, there are about $200 million in that trust fund today that could get us started and complete a number of these projects at that 50-percent local costsharing.

So the Senator has pointed up a very important issue there.

I would also say the Senator from Texas has participated from time to time in our bipartisan discussions on this port problem, and we have worked with the gulf port people as well as with the eastern seaboard in the national port commissions throughout this country, and not everybody is going to be terribly happy with the overall package. But I think we have really hammered out a fairly broad consensus now that does include support from Texas-based ports and other gulf port people as well as from the divergence of the eastern and the western seaboards and the gulf and the Great Lakes.

Senator **Bentsen**. Mr. Chairman, at this point I would like to include the colloquy in the record from June 21, 1985.

The **Chairman**. Without objection.

[The colloquy from the Congressional Record, June 21, 1985 follows:]

Water Projects and Policy

Mr. DOLE. Mr. President, if the Senator from Oregon [Mr. HATFIELD] will yield, I will inquire as to the status of the discussions which have been held with the administration concerning funding contained in this bill for new water projects.

Mr. HATFIELD. I am happy to yield to my good friend from Kansas, the distinguished majority leader.

Mr. DOLE. It is my understanding that the Senator from Oregon and the administration have reached a possible resolution of the impasse which we appeared to be headed toward concerning funding for new water projects in the bill before us. If my understanding is correct, the administration has agreed to drop its opposition to the funding of new water projects based on assurances it has received that the Senate will expeditiously consider and enact legislation providing for non-Federal cost sharing reforms in the water project areas.

Mr. HATFIELD. The distinguished majority leader is correct.

Mr. DOLE. It is my understanding that the outline of the agreement is as follows:

First, language will be included in the supplemental appropriations bill which will "fence" appropriations contained in the bill until cost sharing agreements are reached between the Secretary and non-Federal project sponsors. This language will further provide that unless a binding agreement providing for local cost-sharing and financing is entered into by the Secretary and project sponsors by June 30, 1986, the funds contained in this bill will no longer be available for specific projects failing to meet the deadline. This will assure that projects subject to cost sharing will only be constructed if local sponsors agree to reforms in the manner in which we finance water projects.

It is my further understanding that the Secretary will utilize the cost sharing formulas discussed below in entering into these agreements.

Second, agreed to support and work for authorizing legislation containing the following elements, which I understand are also agreeable to the Senator from South Dakota [Mr. ABDNOR], the Senator from Vermont [Mr. STAFFORD], and the Senator from Oregon [Mr. PACKWOOD].

USER FEES FOR HARBOR MAINTENANCE

A 0.04 percent ad valorem tax on imports and exports to recover 30 to 40 percent of Corps of Engineers harbor operations and maintenance expenditures. Money raised by this tax will be deposited in a dedicated O&M Trust Fund.

NON-NAVIGATION COST SHARING

Non-Federal cost sharing of 25 to 35 percent for flood control and 50 percent cost sharing on new project feasibility studies.

Other cost sharing provisions contained in the Abdnor bill:

	Percent
Hydroelectric	100
M&I water supply	100
Irrigation (corps only)	35
Recreation	50
Beach erosion control	35 to 50
Fish and wildlife mitigation	[1]

[1] Allocated to other project purposes.

State matching grants for dam safety, $15 million a year, but specifically not an entitlement for Federal renovation or construction.

HARBOR CONSTRUCTION COST SHARING

	Upfront (percent)	Amortized (percent)
Depth:		
0 to 20 feet	10	10
20 to 45 feet	25	10
45 and greater	50	10

In determining the amount of the non-Federal upfront contribution, local considerations such as the provision of a dredge fill site, are not to be counted toward meeting the upfront cost share percentage. However, under rules to be promulgated by the Secretary of the Army, some of the value of local consideration may be counted toward meeting the portion of the non-Federal cost share which is amortized. In addition, it has been agreed that the amortized portion of the non-Federal cost share will bear an interest rate determined by the Secretary of the Treasury, plus one-eighth percent recalculated every 5 years on comparable Federal portfolio yield rates.

INLAND NAVIGATION

In exchange for the administration dropping its insistence on large new user fees on the inland system, it has been agreed that 50 percent of the cost of new inland navigation lock and dam construction projects in this bill will be funded from receipts contained in the Inland Waterway Trust Fund. In addition, it has been agreed that the existing fuel tax will be increased from 10 cents a gallon to 20 cents a gallon over 10 years beginning January 1, 1988. Although the amount of revenue is small, the important principle of requiring private companies to pay for at least a small portion of the benefits they receive from the taxpayer is preserved.

It is also my understanding that the Secretary of the Army would have the authority to waive this increase for severely financially distressed barge owners.

SPECIFIC PROJECTS AND NEW PROGRAMS

The administration has reserved its right to oppose projects it deems to be undesirable from its point of view. In addition, it is agreed that the authorization legislation will not include major new programs, specifically a new municipal water facilities loan program.

Mr. HATFIELD. The understanding of the Senator from Kansas is correct.

Mr. DOLE. I commend the Senator from Oregon and the Senator from South Dakota [Mr. Abdnor], who is chairman of the Water Resources Subcommittee, and all of our other colleagues who worked with him and for their hard work and diligence in helping to resolve this most difficult issue. The package which the Senator has outlined has my support, and I look forward to being able to schedule floor action on legislation embodying the provisions described shortly after the July 4 recess.

Mr. ABDNOR. Mr. President, will the Senator from Oregon yield?

Mr. HATFIELD. I am pleased to yield to my friend from South Dakota who has been so instrumental in working out his compromise.

Mr. ABDNOR. I, too, want to commend the Senator from Oregon, the distinguished majority leader, and my colleagues who were part of our negotiations with the administration on this issue. I want to assure my colleagues that the outline of the agreement which has been detailed by the Senator from Kansas has my complete and enthusiastic support. As chairman of the Environment and Public Works Subcommittee on Water Resources, I intend to expeditiously mark up legislation embodying the principles that have been described and to bring it to the floor shortly after the July 4 recess for referral to the Finance Committee for consideration of the tax provisions.

Mr. STAFFORD. Mr. President, will the Senator yield?

Mr. ABDNOR. I am pleased to yield to the Senator from Vermont, the chairman of the Environment and Public Works Committee.

Mr. STAFFORD. I, too, want to assure my colleagues that the bill outlined by the Senator from Kansas has my complete support. As chairman of the Environment and Public Works Committee, I pledge my help to the Senator of South Dakota in moving this bill as soon after the July 4 recess as possible.

Mr. PACKWOOD. Mr. President, will the Senator yield?

Mr. ABDNOR. I yield to the distinguished chairman of the Finance Committee.

Mr. PACKWOOD. This proposal facilitates at long last, the construction of a new lock at Bonneville Dam. As it envisions the imposition of taxes for both harbors and inland waterways, it clearly calls for Finance Committee deliberation. I expect expeditious committee action on this matter.

Mr. DOLE. I congratulate the Senators for a job well done. They have my assurance that I will do everything within my power to schedule floor consideration for legislation reported from the Environment and Public Works and Finance Committees as expeditiously as possible.

Mr. ABDNOR. I thank the distinguished majority leader.

Mr. DOLE. Mr. President, language was included in the supplemental appropriations bill which "fenced" appropriations for 25 new water projects until cost-sharing agreements are reached between the appropriate agency and non-Federal project sponsors. The language further provides that, unless a binding agreement providing for local cost-sharing is entered into by the Secretary and project sponsors by June 30, 1986, the funds contained in that bill will no longer be available for specific projects failing to meet the deadline.

Of the 25 projects included in the supplemental appropriations bill, 11 have not been authorized, and cost-sharing plans have been negotiated for 10. In the long negotiations leading up to passage of the supplemental, the administration has clearly indicated their preference that there be some permanent reforms in place before such projects receive funding. I agree with the administration that it would be constructive to have a long-range policy, and I believe the agreement reached, which is reflected in the appropriations bill, helps to move us in that direction.

Mr. President, in recent years, the administration has required a 35 percent local contribution toward the construction of water projects. Previously, the local cost share was 25 percent. It is the belief of the Senator from Kansas that local governments in most cases should demonstrate their ability to come up with their 35 percent share of the cost before their projects are even placed on an official funding list.

GREAT BEND, KS, FLOOD CONTROL PROJECT

Although not all of the projects previously authorized will receive funding, there is one project that I would like to bring to the attention of my colleagues in the Senate. It should be eligible to receive Federal funding at this time.

The Great Bend water project has already been authorized in the Flood Control Act of 1965. Great Bend, KS, suffered extreme devastation as the result of a very serious flood in 1981. As a result of this the local community passed a bond issue to raise their 35 percent share of the cost of a flood control project.

The Army Corps of Engineers has just completed a restudy of this project, dated April 1985, which makes some significant modifications in the original design and actually decreases the cost. Current estimated cost for this project is $45 million, of which the Great Bend community has contributed $15 million. They are awaiting Federal funding to begin construction of this flood control project. It would have been very helpful to have an initial $3.3 million to complete plans and specs and start on the first one-half mile.

I believe the Great Bend water project has merit and is in a unique position to receive funding for the reasons stated. There is strong local support without which I would not even bring the Great Bend situation to the attention of my colleagues.

EQUITY APPROACH TO WATER PROJECT FUNDING

It doesn't make sense to the Senator from Kansas that we are currently attempting to fund water projects that have never been authorized. This community is perfectly willing to provide its 35 percent share of the cost of a flood control project to prevent future devastation of the kind that occurred in 1981.

Mr. President, the facts of this situation speak for themselves. There appears to be a lack of equity in the way we are approaching the funding of all navigation and other water projects. I strongly urge that an authorizing policy be implemented so that Congress can take a consistent approach to funding such in the future.

Mr. **Danforth**. Mr. President, I ask that a letter from Mr. David Stockman, Director of the Office of Management and Budget, dated June 20, 1985, be printed in the Record at this point.

The letter follows:

Executive Office of the President,
Office of Management and Budget,
Washington, DC, June 20, 1985.

Hon. John Danforth,
U.S. Senate, Washington, DC.

Dear Jack: Thank you for the opportunity to comment on the proposed compromise concerning inland navigation user fees. As I understand the proposal, the existing fuel tax used to fund the Inland Waterways Trust Fund would be increased by 10¢ a gallon over ten years, beginning on January 1, 1988. It is my further understanding that the precise form of this increase will be left to the discretion of the jurisdictional committees providing that the amount of revenue which is raised from the inland waterway industry is equivalent to that which would be generated if the tax were imposed in equal installments over those ten years.

Although the Administration has supported more comprehensive inland waterway user fee legislation in the past, we believe this is a sound and workable compromise which we will endorse and support.

With the adoption of this compromise the Administration will consider that the user fee principle has been affirmed and we will not seek additional inland waterways user fees during the years ahead.

Sincerely,

DAVID A. STOCKMAN.

Mr. **DANFORTH**. Mr. President, could the majority leader assure me that if we enact the legislation he has outlined, he does not intend to support additional fees or taxes on the inland system during the 10-year period involved?

Mr. **DOLE**. Yes; I can give the Senator that assurance.

Mr. **DANFORTH**. Does the Senator from Vermont share that view?

Mr. **STAFFORD**. Yes; the Senator from Vermont is happy to give that assurance.

Mr. **DANFORTH**. Can the Senator from South Dakota also give his assurance on this point?

Mr. **ABDNOR**. I am happy to assure the Senator that he has expressed my views correctly.

Mr. **DANFORTH**. Can I get a similar assurance from the senior Senator from Oregon?

Mr. **HATFIELD**. Yes; the Senator has my assurance on this point.

Mr. **DANFORTH**. Does the junior Senator from Oregon agree?

Mr. **PACKWOOD**. Yes; I share the view expressed by my colleague.

Mr. **DANFORTH**. Can the Senator from New Mexico also assure me on this point?

Mr. **DOMENICI**. Yes; I can provide that assurance.

Mr. **DANFORTH**. Mr. President, with those assurances and the assurances provided by Mr. Stockman, I can offer my enthusiastic support for the resolution of this dispute. The construction of a replacement for locks and dam 26 has been one of my top priorities in the Senate, and the final barrier to that project now seems to have been overcome.

Mr. President, on another subject, I understand the Senator from South Dakota intends to ask the General Accounting Office to study the corps' allocation of costs and benefits to water projects. I am eager to see such a study performed. Could the Senator provide me with some assurances in this regard?

Mr. **ABDNOR**. Yes, I can. I intended to make such a request of the General Accounting Office on behalf of the Subcommittee on Water Resources in the very near future.

Mr. **DOMENICI**. Mr. President, I wish to state my support for this compromise, and to say that I shall do all that I can to see that legislation based on this framework not only passes the Senate, but also becomes the law of the land.

This compromise also provides the guidance on the percentages the Secretary of the Army will use to develop required agreements on the projects included in the supplemental appropriations bill.

I have worked on water resources issues since I first entered the Senate. It has long been my view that we could never go forward on one particular aspect of the Federal water resources development effort until we addressed the issues on a comprehensive basis, a basis that included major reforms in the sharing of costs.

This agreement provides that comprehensive approach. It represents a giant step toward a resolution of these many difficult issues.

I commend my colleagues who are participating in this colloquy for their hard work in reaching this important compromise.

Mr. **STAFFORD**. Mr. President, I wish to endorse the agreement that has just been described by the distinguished majority leader, Mr. Dole, and the distinguished chairman of the Committee on Appropriations, Mr. Hatfield.

I believe this is a historical compromise, an important occasion. This agreement on the outlines of an omnibus water resources bill should enable us to overcome a decade of inaction and pass an omnibus water bill.

While I am not convinced that each and every one of the percentages contained in this compromise is set at the levels I would have selected, I must emphasize that this is a compromise. I will willingly and enthusiastically support these numbers, and I shall do everything that I can to see that they become the law of the land as quickly as possible.

Mr. President, many of our colleagues have given up something in order to reach this compromise. This willingness to compromise will benefit the Nation. It will enable needed water projects to go forward, but to go forward in a way that proves less costly to the Federal taxpayers, while providing the discipline and the guidance of the marketplace.

The provisions we are outlining today will provide the direction we need to give the corps to enable it to work out cost-sharing agreements.

To help my colleagues place this issue in perspective, I ask that a recent article from the Wall Street Journal be printed at the conclusion of my remarks.

Before closing, I want to say a few words of commendation regarding several Members of the Senate who have worked so very hard and constructively on this issue.

First, let me commend my colleague on the Committee on Environment and Public Works, Mr. Abdnor. Without Jim Abdnor's great leadership and continuing struggle over these issues, we woud never have reached this point. He is a leader and a tireless worker in this subject. Each of us is in his debt.

Next, I want to say a particular word of thanks to the chairman of the Committee on Appropriations, Mr. Hatfield. His intelligence and thoughtful approach has proved vital in developing this compromise.

The Director of the Office of Management and Budget, Mr. David Stockman, has proved a tower of strength in developing this compromise. His commitment through long hours at meetings here on the Hill with Members has been vital to our success.

Even though the chairman of the Committee on the Budget, Mr. Domenici, has been devoting most of his time to the Budget Conference, he has taken time to help us work out his compromise.

My good friend, the chairman of the Committee on Rules, Mr. Mathias, has been very constructive in helping us work out this proposal. I think I can say without doubt that we would never have seen the Baltimore Harbor deepening project go forward were it not for the tireless work of Senator Mathias.

The Chairman of the Committee on Finance, Mr. Packwood, has worked hard to help us reach this compromise. The Senator from Virginia [Mr. Warner], the Senator from Georgia [Mr. Mattingly], the distinguished President pro tempore [Mr. Thurmond], and the Senator from Missouri [Mr. Danforth] each participated actively in the discussions and debate that led to the development of this compromise. Each has my personal thanks and commendation.

And, of course, we must all thank the majority leader, Mr. Dole, who kept us working until we were able to develop this understanding.

I applaud each of our colleagues. I intend to do all that I can to see that we report and pass a bill based on this compromise before the August recess.

The article from the Wall Street Journal follows:

[From the Wall Street Journal, May 3, 1985]

POWER OF PORK-BARREL POLITICS ON WATER PROJECTS SLIPS AS ENVIRONMENTAL, BUDGET PRESSURES GROW

(By Ellen Hume)

WASHINGTON. In the game of pork-barrel politics, Santa Margarita should be an easy winner.

This proposed $218 million, twin-dam project near San Diego is in President Reagan's home state and has his support. Attorney General Edwin Meese has written letters on its behalf. Retired Naval Reserve Adm. Robert Garrick, formerly Mr. Meese's top White House aide, has worked as a paid lobbyist for the project and owns property near the affected area.

To top that off, Santa Margarita is being promoted as a defense project. It would provide drinking water to the U.S. Marines at Camp Pendleton, as well as serving the avocado growers and real estate developers of northern San Diego County.

But Santa Margarita's prospects are fading. Federal funds for such undertakings, once the political lifeblood of Congress, has virtually dried up. If the project gets built at all, it probably will be scaled back to about half the original design, supporters say.

The saga of Santa Margarita shows how dramatically pork-barrel power has slipped since Congress's water barons rolled over President Carter in 1977, defying his "hit list" of canceled water projects. The merging of new budget constraints with growing environmental pressures has changed the politics of pushing for the multimillion dollar projects of yesterday.

POWERS DILUTED

The change is spurred by a formidable new alliance. The environmental lobby which was at war with the Reagan administration just a few years ago, has begun working closely with David Stockman, the president's chief budget cutter. Their cause is aided by new evidence of long-suspected environmental problems such as the polluted federal irrigation runoff fouling the Kesterson wildlife refuge in California's San Joaquin Valley. They are also using economics more effectively to challenge the costs and benefits of such projects as the O'Neill dam in Nebraska.

Meanwhile, not only are the great water czars gone from Congress, but their old powers have been diluted by committee rule changes. Now skeptics like Democratic Reps. George Miller of California and Robert Edgar of Pennsylvania are boosting their careers by fighting public works boondoggles.

"When I got here, in order to prove your manhood, you had to get a water project authorized and appropriated. You had to vote for bad projects in order to get good projects in," recalls Rep. Edgar, who is serving his sixth term.

"It's the end of the fat cat era, when it was just a question of a member calling his friend on the right committee and getting this project put in," says Robert Will, a water lobbyist who is fighting for the Santa Margarita project. "We're being put on the spot to do a lot better job in justifying any project today."

"The pork-barrel politicians have developed some wily tactics for getting around the new watchdogs. But even if they succeed, the projects don't have the political reward of past years—as former California Rep. Don Clausen's reelection battle of a few years ago showed."

Under pressure to prove he could deliver federal largesse to this Eureka district, the Republican congressman developed a plan to aid 100 homes threatened by coastline ocean erosion. He figured that if the house were endangered, the road would be too. So he called the aid a "highway" project and persuaded Congress to bankroll it with the self-generating federal Highway Trust Fund.

In the end, about $9 million was spent to save "at the most, about $1.5 million worth of tacky trailer homes," asserts Democratic Rep. Doug Bosco, who defeated Rep. Clausen in 1982 despite his public works prowess. "It would have been better," Mr. Bosco says, "just to give everybody over there $30,000 each and tell them to get out of town."

APPROPRIATIONS DECLINE

Even Rep. Thomas Bevill, who runs the House Appropriations subcommittee on energy and water development, was nearly left high and dry on his lifelong dream project—the $2 billion Tennessee-Tombigbee barge canal to connect the Tennessee River with the port of Mobile, Ala.

When the Alabama Democrat knew he couldn't win the 1984 appropriations bill vote for the last $212 million needed to finish the project, he simply omitted Ten-Tom as a line item in the bill, avoiding a showdown vote. Then he inserted language in the committee report directing the U.S. Army Corps of Engineers to complete the project "within funds available." There were just enough "available" funds included in the bill.

In defense of such tactics, Rep. Bevill says, "there hasn't been a time in the history of our country when water projects have been more important." But the growing political mood against public works is apparent in the Corps of Engineers construction appropriations for water projects, which have slid from a peak of more than $1.6 billion in 1980 to an estimate of less than $900 million in fiscal 1985, the lowest total in 10 years.

Some believe private industry will pick up the slack. In Southern California, for example, Parsons Corp. of Pasadena proposes to finance improvements for the Imperial irrigation district, which originally was a federal project. In return, Parsons would receive a share of the proceeds from selling Imperial water to users around the state.

The political tide has turned against costly public works projects, says Rep. Edgar. "The more my colleagues get angry at me" for fighting their projects, he says, "the more votes I'm getting back home."

Mr. WARNER. Mr. President, I commend my distinguished colleagues, the majority leader, Senator Hatfield, Senator Abdnor, Senator Stafford, Senator Packwood, Senator Domenici, and others who have worked so diligently for many years to reach a consensus on water resources legislation.

At long last, it appears we have an agreement which is acceptable to both the administration and the Senate leadership.

Hopefully, it will also be agreeable to the House of Representatives.

Unfortunately, major public works legislation like that being proposed today has not been approved by the Senate since 1976.

It is long overdue.

Since being a Member of the Senate, one of my top priorities has been the passage of water resources legislation.

Passage of this legislation is absolutely critical to our national interest.

It will allow harbor improvements and other vital water projects to move forward.

A modern harbor system means jobs for unemployed Americans, a more favorable balance of trade, fulfillment of our national security commitments, a stable source of energy for our allies, and a renewal of American competitiveness in international trade.

Mr. President, those of us committed to water resources legislation have come a long way together, but we have a long way to go to get this bill passed and on the President's desk.

The framework outlined today is far from perfect, but I believe it is a workable compromise which deserves consideration by the full Senate.

I urge the leadership of the Senate Environment and Public Works Committee and the Finance Committee to report the authorization for these omnibus water projects as expeditiously as possible so that the bill can be passed by the full Senate prior to the August recess.

I am here to volunteer to roll up my sleeves, and seek every legislative avenue available to see that this bill is finally enacted into law.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, very much in the same tone, I remember seeing a little snip on television in January 1981, when the new Senate majority came in. I remember a scene of the Senator from Oregon walking into Mr. Baker's office saying, "I never thought we'd see the day." And I reached the point where I didn't know we would ever live to see this day, either.

I have served as chairman of the Subcommittee on Water Resources in the Environment and Public Works, and I am the ranking member. It got to be a very large question in my mind. It seemed to me that the United States had got to build at least three deepwater coal ports in this country, maybe four, but at least one on the east coast, one on the gulf, and one on the west coast.

In Europe they were asking us, "Are you going to do this?" because they were entering long-term coal contracts, and the supercolliers are coming along like supertankers came along, and South Africa and Australia have built ports that can take these colliers for export. And all over Europe there are such 60 feet of ports, basically, for receiving them. There is no such port in the United States that can handle such a shipment.

It seemed to me our political system was quite capable of building 15 of these ports by the year 2020, but we need 3 of them in this decade. And I was not clear that we had the political capacity to do it.

It turns out—the Lord looks after us—we have; we have it here.

May I say just in passing that, while we were waiting, Alaska went and built one of these on its own. Seward in Alaska can handle such a supercollier, and they are now beginning trade with Korea and a Korean-built collier.

The Port of New York/New Jersey has had to be very reluctant about accepting an ad valorem tax. Ours is not bulk cargo; it is manufactured cargo in either direction and has a high value. And in the atmosphere of the last 15 years almost, it would have been our normal response that, "Since you won't do anything, we won't do anything, and we won't go along with this."

But to the contrary, this is possible. It is possible to do something large and national, and the Port of New York/New Jersey will go along. It very much wants to. But behind this measure we would like a small provision for cargo that is in transit to Canada. I don't think we want to penalize that transit traffic. It is not substantial, but it is a consideration we would like.

But mainly, I would say let's move on with this as the chairman has done. We have a bill out of Environment and Public Works; we have a revenue provision here; we have agreement with the administration. It has taken 15 years; it may not come again in this century. So this is the moment to seize and the moment to congratulate the chairman of the Appropriations Committee, both for his extraordinary success here and for the obvious willingness he will have in years to come to leave to the Committee on Environment and Public Works its proper realm of authorizing projects and seeing to it that projects that aren't authorized aren't funded.

Thank you.

Senator **Hatfield**. Thank you, Senator.

The **Chairman**. Thank you very much, Senator Hatfield.

Senator **Hatfield**. Thank you, Mr. Chairman.

The **Chairman**. We will now take a panel consisting of J. Ron Brinson, the president of the American Association of Port Authorities; Roy Hoffman, the Municipal Port Director in Milwaukee, WI; and Dr. E.L. Perry, Port of Los Angeles, speaking on behalf of the National Coalition for Port Progress.

Gentlemen, we follow a rule in this committee of limiting our witnesses to 5 minutes for their oral statements; although that does not apply to our fellow Senators nor to principal Cabinet officials. All of your statements in their entirety will be in the record. We would ask that you summarize them orally so that we might ask you questions. Mr. Brinson, why don't you start?

STATEMENT BY J. RON BRINSON, PRESIDENT, AMERICAN ASSOCIATION OF PORT AUTHORITIES, WASHINGTON, DC, ACCOMPANIED BY ROY F. HOFFMAN, MUNICIPAL PORT DIRECTOR, PORT OF MILWAUKEE, MILWAUKEE, WI

Mr. **Brinson**. Thank you very much, Mr. Chairman.

As you know, the American Association of Port Authorities, founded in 1912, today represents virtually all of the public port authorities in the United States. After more than 6 years of long and certainly decisive debate, we can say today that the U.S. port industry stands generally united in its interest and support for a concept of legislation which would authorize much needed new channel projects with equitable new formulas for costsharing and cost recovery.

This concept is embodied in S. 1567. It is embodied in H.R. 6. And today the port industry sees the prospects for a navigation development program with which it can live in a very positive light.

In our testimony we document the vital importance of the U.S. port system and the Federal deepdraft national system to the national interest. We document the very impressive record of U.S. public port authorities in developing the modern and efficient port system upon which the United States depends to service its flow of waterborne commerce and to provide for its national defense needs.

We also document the immediate needs for congressionally authorized projects to expand and to improve the capabilities of the deepdraft navigation system so as to assure that the port and harbor facilities that this Nation will require by the year 2000 can be put in place.

We present our industry's case for equity in any plan to change funding formulas for Federal channel projects, and particularly any plan that would shift Federal funding responsibilities to public port authorities. Any change must recognize the reality that the Federal Government's role regarding sponsorship of Federal navigation channels has applied for more than one century.

Public port authorities of this country have in good faith relied upon the constancy of the Federal role in their initiatives to develop landside port terminal facilities and related infrastructure. Any prospective change in the Federal role engages the economic concerns and, yes, the keen competitive concerns of all public port authorities.

S. 1567 is a product of years of earnest efforts within our industry and within Congress to effect compromise. We are certainly grateful to the leadership that has been afforded by this committee, certainly the Committee on Environment and Public Works, and the Senate Appropriations Committee.

In concept, S. 1567 is acceptable to our industry; however, it is far from a perfect bill. And we strongly believe that the refinements that we have recommended in our testimony today are necessary to assure the full effectiveness of the legislation, and particularly to assure the full equity to public port authorities.

We urge this committee's close consideration of our concerns as expressed, and the port industry believes that the deepdraft navigation provisions of S. 1567 are indeed workable.

We look forward to working with this and all of the other congressional committees to refine it and, yes, as best we can, to perfect it.

Thank you very much.

The CHAIRMAN. Thank you, sir.

Mr. Hoffman.

[Mr. Brinson's written testimony follows:]

Statement of the American Association of Port Authorities
To The Committee on Finance, U.S. Senate
The Honorable Bob Packwood, Chairman
Regarding Senate Bill 1567

The American Association of Port Authorities, founded in 1912, today represents virtually all the public seaport authorities in the United States.

The issues of navigation development are extremely important to U.S. ports and to those persons and entities who rely on our port facilities to provide the best possible interface services for the nation's maritime transportation operations. In the last decade, the U.S. port industry has faced the growing challenge of dealing with the uncertainty of the federal government's future role in developing and maintaining the federal navigation system. Discussions of many years have brought public port administrators to a realization that development of the nation's deepdraft navigation system with acceptable levels of maintenance is absolutely critical to the processes of port planning and development required to accommodate well-defined and very valid national needs.

The importance of this reality has not, however, been reflected in positive action. Because so much is at stake, the issues involved in navigation development legislation have defied quick solution. In recent years, many bills have been introduced in an effort to deal with this issue. However, we now have reason to believe that this Congress offers hope for resolution of the impasse in port development legislation. Congress seems to be coalescing behind a few major legislative initiatives. The Executive Branch has now put forward concrete proposals for consideration. Indeed, our competitive port industry, which has been divided on many key points of how navigation development and maintenance programs should be formulated, is now coming together with a unified position. It is no coincidence that these controversial provisions address the very heart and soul of the traditional partnership between the federal government and state and local port entities.

The need for an enlightened program of federal channel development projects is well-documented. Action is required now.

Dredging issues relate to a very important national problem that is remarkable for its complexity. These issues engage a full spectrum of economic considerations, ranging from the perceived responsibilities of users to pay for federal services to the economic survival of a number of U.S. port communities.

In terms of landside cargo handling capabilities, it can be said that the U.S. port system today is the equal of any other nation's. The critical problem is that federal navigation channel and harbor development has simply not kept pace with the tremendous landside facility development carried out by the nation's public port authorities and private entities. While ships have been getting bigger and trade volumes expanding, the federal government has done very little to foster development of the federal deepdraft navigation system in the last 20 years. Congress has not authorized a single deepdraft navigation project of any size or dimension since 1976. More than 30 such projects now await Congressional approval. In fiscal 1985, the extent of the Corps of Engineers' development and maintenance dredging projects equated to less than 40 percent of such projects carried out in 1963.

Port development in the United States also is impeded by burdensome procedural and regulatory requirements. It now normally takes 20 to 25 years to develop an authorized navigation project from conception to completion. Permits for landside cargo-handling facilities often require several years. The bureaucracy under which U.S. port development must take place is distended, onerous and, by any measurement, counterproductive. From the perspective of those responsible for port development, federal procedures seem actually to mandate delays. Every port in the U.S. has been adversely affected by what is benignly called the federal "system" for authorizations and permits.

Clearly, this record conflicts with the level of activities which generate the need for navigation development. The United States is as dependent as ever on the movement of international trade. Present international trade volumes are expected to nearly double by the end of the century. Some 95 percent of U.S. international trade volumes move via ocean carriage and thus are dependent upon the port and navigation systems. Technological advances toward larger, more automated ships have thrust dramatic changes upon all components of the international maritime shipping industry, particularly upon port facilities where flow-of-commerce demands for modern and efficient cargo handling capabilities are ever increasing.

U.S. Department of Defense spokesmen have confirmed on many occasions in recent years that critical U.S. national defense and mobilization strategies depend upon ocean carrier movements, and thus upon the U.S. system of ports and deepdraft navigation channels. Twenty-four ports along the four coasts have been designated "National Defense Ports," but Department of Defense spokesmen have made it clear that ultimately they will be relying on all ports to support emergency operations. Indeed, the mechanism to take over the ports under certain emergency conditions is in place. The nation's defense must be a carefully considered factor in policymaking and planning for the port and navigation systems, both in terms of the capabilities of those systems and in the assurance of sufficient redundancy.

"The Partnership"

Traditionally, the U.S. port system has been developed on the basis of a partnership between local and state port authorities and the federal government. Landside cargo handling facilities and associated infrastructure including prescribed components of federal navigation projects, are provided by local, state and private interests. Navigational capabilities have been the responsibility of the federal government.

For their part, the local, state and private interests have responded to the dynamics of change in a most dramatic manner. In its 1984 report on the status of U.S. public ports, the U.S. Maritime Administration states that local, state and private entities invested some $5 billion in terminal facilities in the period 1946-1980 and are likely to invest $5 billion more in this decade. All of this money has been and is being invested in a good-faith reliance upon the federal government to fulfill its traditional responsibility in providing appropriate development and adequate maintenance of our nation's deepdraft navigation system. The U.S. Maritime Administration has determined that the cash value of landside facilities at U.S. ports was $59.6 billion in 1983 with a replacement value of $78.3 billion. It is essential that any Congressional action to change traditional funding formulae for navigation projects recognize and respect the record of investment in port facilities by non-federal entities, which have relied on the constancy of the federal role in operating and maintaining the nation's deepdraft navigation channels.

The navigation system belongs to the federal government. Its development through the years has been premised on the reality that the nation as a whole has a well-defined interest in both the flow of international commerce and in maintaining adequate national defense capabilities. Present conditions and identified trends reinforce this premise; the United States is vitally dependent on its system of seaports and deepdraft navigation channels.

Total federal investments in the deepdraft navigation channels from 1824 through fiscal year 1979 were approximately $4.4 billion. This compares to the 1946-1980 investments of the port industry which are estimated at $5 billion. Clearly, the federal government's investment in deepdraft navigation channels has supported a far greater level of port development and operations which generate a wide range of positive economic benefits.

In addition to providing essential transportation services to international trade flows and serving national defense strategies, the U.S. seaport and navigation systems produce significant direct benefits to the federal government. The U.S. Maritime Administration has concluded that activities at U.S. ports provide direct employment for more than one million persons, ranking the U.S. port system as a major national industry. For the past three years, the federal treasury has realized more than $6 billion annually in Customs receipts collected at U.S. seaports, or more than ten times the amount the federal government presently is spending on the deepdraft navigation projects. In fiscal 1984, government receipts from that source were an estimated $8.3 billion.

A port is a combination of landside facilities and navigation capabilities. Thus, the U.S. port system is only as good as the federal deepdraft navigation system. The paramount importance of maintaining a navigation capability consistent with the nation's international trade and national defense needs has not been adequately reflected in Congressional action. Evidence of the shortcoming is mounting. The port facilities that the United States will require by the turn of the century are not yet in place. In its National Port Assessment 1980-1990, the Maritime Administration estimates a requirement for 247 additional seaport berthing facilities, representing a basic capital investment of at least $5 billion through the end of this decade. Under the traditional system of port development, the initiative to accommodate these well-documented needs will come not from the federal government, but from local, state and private entities. The ability of these nonfederal interests to plan and to provide for the necessary port development is seriously inhibited by the federal government's lack of support for the deepdraft navigation system. This is a problem which must not be misunderstood or underestimated if the nation's needs for port development are to be accommodated.

A Program of Deepdraft Navigation Development

The U.S. port industry holds that in the national interest, it is imperative that the federal government commit to a program to assure the appropriate levels of operation and maintenance and the orderly development of U.S. deepdraft navigation channels.

Legislation relating to harbor and channel development must not simply redefine procedures and formulae by which projects are authorized and financed. Such legislation must also assure a well-defined program of updated maintenance schedules and development work on deepdraft navigation channels. And such legislation should set forth a new mandate of procedural efficiency to ensure that this essential work is carried out in the most timely and economic manner possible.

On November 28, 1984, the U.S. Legislative Policy Council of AAPA adopted a four-point position summary that sets forth the U.S. port industry's basic positions concerning the development and maintenance of the nation's harbors and navigation channels.

1. PROCEDURAL REFORMS TO EXPEDITE CHANNEL PROJECTS DEVELOPMENT

AAPA supports the limited procedural reforms proposed in S. 366. More comprehensive changes are indicated, however. Indeed, the U.S. port industry views "fast-tracking" reforms in the procedural systems by which channel and harbor projects are authorized and developed as a critical legislative objective. Meaningful changes which would substantially reduce typical project development cycles are essential if national needs for port and navigation system capabilities are to be accommodated in an orderly and responsible manner.

2. OPERATIONS & MAINTENANCE COSTS

The U.S. port industry recognizes the critical nature of growing federal budget deficits; indeed, U.S. ports are adversely impacted in numerous ways by the insidious effects of mounting federal debt. The port industry believes, however, that the operation and maintenance of the present federal deepdraft navigation system must be considered a distinct federal responsibility. Any shift of such costs to navigation system users, carriers or port authorities would surely create a series of negative impacts on the flow of commerce, on the competitive position of U.S. products in international markets, and on the ability of many port authorities to sustain economically beneficial operations. The ultimate result of such cost recovery may well prove to be counterproductive to the national interest. Thus, such initiatives toward cost recovery must be considered with great care and sensitivity, lest short-sighted cost-recovery goals compound U.S. international trade problems.

3. COST-SHARING--NEW WORK

U.S. port authorities, acting as local assurers for federal navigation projects, now contribute substantial shares of total project costs. The port industry believes that this current system of cost-sharing must be well-recognized and respected in any initiative to legislate new cost-sharing formulas. Any additional cost sharing for projects of all depths must appropriately reflect the vital national interest in the adequacy of the deepdraft navigation system and the utility of the navigation system to federal government operations.

4. ALLOCATION OF CUSTOMS RECEIPTS

The federal government collects more than $8 billion annually at U.S. ports in the form of customs fees on cargos moving via the federal deepdraft navigation system; thus, the navigation system must be considered an essential utility to customs collection procedures. The U.S. port industry believes that it would be economically appropriate to have a small percentage of these revenues directly allocated to fund the federal government's share of costs associated with the development and operations and maintenance of the deepdraft navigation system.

In summary, the U.S. port industry calls on Congress to declare an extended program of harbor and channel development and maintenance with the objective of modernizing the deepdraft navigation system to an acceptable status by the year 2000. The schedule of projects to be authorized in S. 1567 is consistent with this objective.

Clearly, the United States is faced with the challenge of reversing the effects of inaction during the last 20 years; to catch up so as to equip the nation with the deepdraft navigation system so essential to its economic well-being and national security. Even with new levels of cost-sharing, such a program will require federal expenditures far in excess of monies spent in recent years when these needs were not addressed. The U.S. port industry urges Congress to respond to the general need for navigation development with appropriate commitments. The Congress can be assured that the local and state port agencies of this country will continue to provide the initiative, the expertise and, yes, the considerable capital investment to ensure development of landside port facilities necessary to accommodate the demands of this nation's waterborne commerce.

Cumulative Impacts of Shifting Cost Burdens

Since the beginning of its first term, President Reagan's Administration has indicated its intention to have enacted a number of transportation-related cost recovery user fees. These include: charges to recover federal expenditures associated with the nation's navigation system, shallowdraft and deepdraft; user charges to recover certain expenses related to Coast Guard services to commercial vessels and cargo handling facilities; and user fees to recover a portion of costs for Customs' services. Such cost-recovery schemes have again been proposed this year. These initiatives reflect the premise that costs of providing federal services should be borne by the users of such services.

The U.S. port industry is deeply concerned over the cumulative impact that such fees, if enacted, might have on U.S. international trade, particularly price-sensitive exports.

AAPA has in the past and will continue to urge the Reagan Administration and Congress to keep in mind that each user fee that is imposed has implications that extend far beyond the federal government's immediate economic objectives. The flow of the nation's commerce has been established on the basis of a constant federal role in providing certain transportation services. The imposition of user fees will alter present patterns of trade and the competitiveness of many U.S. exports as well as the price of imports. The impacts of any specific user fee and the cumulative impacts of all proposed user fees must be identified and measured before imposition. To do less would increase the risk of achieving immediate cost-recovery goals at the expense of exacerbating U.S. trade deficits, compounding the economic plight of American farmers and other key export interests, and undermining port facility investments underwritten by constituents of local and state port authorities.

There are, in addition, provisions contained in certain tax reform proposals that could, if enacted together with the Administration's water resource development legislation, impede port revenue raising capabilities and seriously impair the ability of a significant number of this nation's public port authorities to undertake vital port development projects. These provisions are aimed at the elimination of the tax exempt status of public port authority bonding authority.

AAPA believes that it is the responsibility of the Administration to determine and make public the cumulative impact of all their various proposals affecting the U.S. port system. AAPA urges the members of this Committee to be aware of the entirety of all the Administration's policy proposals and their aggregate effects on this nation's port system.

Respectfully Submitted,

J. Ron Brinson
President
American Association of Port Authorities
(on behalf of the Association's U.S. Legislative Policy Council)

ADDENDUM TO AAPA STATEMENT TO SENATE FINANCE COMMITTEE

September 10, 1985

The federal government's role regarding sponsorship of federal navigation channels has been long standing. Public port authorities of the United States have, in good faith, relied upon the constancy of the federal role in their development of landside port terminal facilities and related infrastructure. Thus, any prospective changes in the federal role is a major concern to the port industry, one that engages the inherent competitiveness of the nation's port system.

While the port industry has been strongly united on the general aspects of navigation channel development legislation, there have been differences in views regarding funding formulas for new projects and operations and maintenance programs.

Four years ago, two separate coalitions of AAPA member ports were formed to represent differing views of major features of navigation development legislation. Within the last 30 days, the Coalition for Port Progress and the U.S. Port System Advocates, acting under the urging of the AAPA, have reached an agreement on nearly all the issues which have heretofore precluded a strong port industry consensus on the general initiatives toward harbor and channel development legislation.

The statement of agreement follows. It has been tentatively adopted by the AAPA United States Legislative Policy Committee and is expected to be approved formally at the Association's 1985 convention next week in Portland, Oregon.

Statement of Agreement--U.S. Port System Advocates and Coalition for Port Progress.

The port industry continues to support water resource legislation that recognizes and is sensitive to the variety of impacts imposition of user charges can have:

* On the competitive balance that exists between U.S. ports.

* On the maintenance and continued growth of U.S. ports, large and small.

* On the competitiveness of U.S. exports on world markets.

While the port industry is encouraged by recent congressional action taken on the water resource legislation, we do believe there is a need not only to reconcile the differences between the House and the Senate, but there is also a need to "fine tune" the compromise legislation.

Specifically, the port industry would strongly recommend changes as follows:

* Language be developed to clarify congressional intent to "fast track" administrative proceedings associated with planning, permit reviews, environmental studies, design work, and construction of new work.

* Recognition that the cost recovery levels for local cost sharing on new work and for feasibility studies for projects, in addition to the traditional local sponsor costs, may prove too much of a burden for many worthwhile projects. Therefore, the port industry would strongly support the "Roe" version of local sponsor costs.

* Ports ought to be able to "self-start" a project, with the ability to obtain reimbursement from the federal government, if the project subsequently becomes an authorized project.

* Local ports want to be able to contract with the Corps to perform part or all of design and management for a project.

* Amendment is needed to clarify language of the Senate bill authorizing local ports to impose a user charge to provide the local cost share of new starts--without requirements about "reasonable benefits."

* Support language that would continue to authorize a "loan guarantee" for local cost share requirements.

* Support use of national ad valorem user fee as vehicle to provide for partial cost recovery of O&M expenditures.

* Suggest that cost sharing for feasibility studies between federal and locals be on same percentage as construction percentages for new work.

* A process or mechanism should be developed so that local sponsors of projects have a "user pay, user say" involvement as projects move forward, from feasibility studies through construction.

There is general acceptance within the port industry that if new sources of federal revenues are needed to finance the U.S. navigation system, the sources of these revenues be:

* A partial recovery of the operation and maintenance expenditures of the navigation system through imposition of a uniform, nationally imposed and administered ad valorem-based user charge.

* Local cost sharing of new project construction costs, if local cost sharing recognizes the costs that local sponsors have traditionally assumed,and if the local cost share is at a level within the capability of the local area and not detrimental to the movement of cargoes.

There are two other issues of importance to the port industry:

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- Operations and Maintenance User Fee and Canadian-Mexican Traffic. The O&M user fee is designed as a nationally uniform fee to avoid competitive impacts between U.S. ports. However, the imposition of the fee on all cargo will have a serious adverse impact on U.S. ports that compete with ports in Canada and Mexico. First, some U.S. ports could lose substantial import and export traffic between Canada or Mexico and third countries. Second, Canadian or Mexican ports and rail systems could attract import and export traffic between U.S. inland cities and third countries. We recommend two proposals:

  - Exempt from the user fee the Canadian and Mexican imports and exports that are in transit through the United States.

  - Apply the fee, at the U.S. point of entry or exit, to U.S. exports and imports using Canadian or Mexican maritime ports.

- Equal Treatment of U.S. Great Lakes Ports. We recommend support of legislation, as contained in the recent Hatfield staff draft, which specifically includes operation and maintenance costs of the U.S. Great Lakes St. Lawrence Seaway System as part of the U.S. navigation system to be financed under the "one system, one fee" concept.

STATEMENT BY ROY F. HOFFMAN, MUNICIPAL PORT DIRECTOR, PORT OF MILWAUKEE, MILWAUKEE, WI

Mr. HOFFMAN. Chairman Packwood, honorable members of the Senate Committee on Finance, I am representing the Port System Advocates of the United States.

We are primarily a coalition of 32 U.S. deepwater ports comprised primarily of the smaller coastal ports, the Great Lakes ports, and 9 major ports including Charleston, Savannah, Miami, Philadelphia, and Portland, OR.

Our position, over the past three Congresses, steadfastly has been that the United States must improve what goes to maintain a modern deepwater navigation system in order to remain competitive in domestic and foreign trade.

In view of the burgeoning Federal debt, we have accepted the fact that some form of Federal cost recovery is inevitable if we are to attain and maintain a competitive edge for U.S. deepwater ports.

We strongly support the Water Resouces Development Act of 1985, as the best compromise in regaining U.S. leadership in the international system of ports.

As Mr. Brinson has said, for the first time in over 5 years this bill represents a position that the entire U.S. port industry can support, including our largest ports represented by the National Coalition for Port Progress.

We commend the Committee on Environment and Public Works for a job well done, by bringing the U.S. ports together on an extremely divisive issue.

The Great Lakes ports are particularly pleased to note that their long-sought concept of one system, one fee, essentially has prevailed, as drafted from the original Hatfield bill.

There are several concerns I would like to bring up, sir. We caution against any compromise that would substantially alter the ad valorem cost-recovery fee concept for the operation and maintenance of commercial harbors and connecting channels. Any cost-recovery system for navigation improvements must recognize and be sensitive to the competitiveness of U.S. exports in world markets, the maintenance and continued growth of U.S. ports—large and small—and the competitive balance that exists between U.S. ports and economic regions.

We are adamantly opposed to the concept of a user fee based on cargo tonnage as now being promoted by the House of Representatives' Subcommittee on Merchant Marine and Fisheries. For example, a shipper of 60,000 tons of iron ore from Duluth to Cleveland, as set up by the current ad valorem fee in this bill, he would pay about $1,500. If we go to the 14-cents-per-ton concept, it would be $8,400. I need not impress upon you the serious depression that the Great Lakes iron and steel industry finds itself in at this time.

Similarly, a 30,000-ton shipment of grain out of Charleston in this case, instead of Portland, if you will, under this setup would pay about $10,057 for a 30,000-ton shipment. Under the tonnage system we would pay about $4,200. In an industry that measures profit in mils-per-bushel and a commodity that represents the largest export of the United States, the impact of course is obvious.

We also invite your attention to title VI, section 601, of this bill, where the Secretary of the Army will not initiate studies on any proposed commercial channel or harbor project until an appropriate non-Federal sponsor has contracted with the Secretary to pay 50 percent of the study cost.

Now, Corps of Engineers' feasibility studies are necessarily costly in order to handle all of the Federal requirements from other Federal agencies, in addition to fully considering the Federal interest in navigation. What we fear is that 50 percent across-the-board costsharing will eventually dry up the corps' civil work planning capability. This is particularly true of interstate and international navigation projects. Why, for example, should the Port Authority of New Orleans pay 50 percent of the lower Mississippi River navigation study, when the entire Mississippi River basin from Pennsylvania to Montana substantially benefits? Yet, what chance is there that Nebraska and Kentucky will contribute a fair share?

Similarly, we could say the same thing for New York contributing to a study on the expansion of the Sault Ste. Marie locks. Ontario is most likely the largest economic benefactor.

We have similar analogies with Chesapeake Bay and the Columbia/Snake River system.

We suggest that the national interest transcends probable emasculation of the Corps of Engineers' Civil Works Planning Program, if we go with this 50 percent requirement.

Finally, the O&M user fee is designed as a national uniform fee to avoid the fee. And I will let my associate from the National Coalition for Port Programs speak on that. Thank you.

[The prepared statement of Ray F. Hoffman follows:]

STATEMENT OF
THE U.S. PORT SYSTEM ADVOCATES

ON

S. 1567

THE WATER RESOURCES DEVELOPMENT ACT OF 1985

BEFORE THE

UNITED STATES SENATE COMMITTEE ON FINANCE

10 SEPTEMBER 1985

DIRKSEN SENATE OFFICE BUILDING
ROOM 215

BY

ROY F. HOFFMANN
REAR ADMIRAL, USN (Ret.)
VICE CHARIMAN
U.S. PORT SYSTEM ADVOCATES

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PORT OF MILWAUKEE, USA
A CITY OF MILWAUKEE OPERATION

September 7, 1985

Hon. Bob Packwood
Chairman
Senate Committee on Finance
219 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Chairman Packwood, honorable members of the Senate Committee on Finance:

My name is Roy F. Hoffmann, Port Director, Port of Milwaukee, Wisconsin, speaking in behalf of and representing the United States Port System Advocates. We are a coalition of 32 United States deep water ports comprised primarily of the smaller coastal ports, Great lakes ports and nine major ports including Charleston, Savannah, Miami, Tampa, Philadelphia, Sacramento and Portland.

Our position over the past three Congresses steadfastly has been that the U.S. must improve and maintain a modern deep water navigation system in order to remain competitive in domestic and foreign trade; and that if a cost recovery system is absolutely necessary to achieve this position, then the system must be Federally controlled, uniform and based on an ad valorem principle.

In view of the burgeoning Federal debt, we have accepted the fact that some form of Federal cost recovery is inevitable if we are to attain and maintain a competitive edge for U.S. deep

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RADM Roy F. Hoffmann (U.S.N. Ret.), Municipal Port Director

water ports and our national navigation system channel improvements. We strongly support the Water Resources Development Act of 1985 (S. 1567) as the best compromise in regaining U.S. leadership in the international system of ports. For the first time in over five years this bill represents a position that the entire U.S. port industry can support, including our largest ports represented by the National Coalition for Port Progress.

We commend the Committee on Environment and Public Works for a job well done by bringing the U.S. ports together on an extremely devisive issue. The U.S. Great Lakes ports are particularly pleased to note that their long sought concept of "one system-one fee" essentially has prevailed as drafted from the original Hatfield bill.

However, their are several concerns that the Port System Advocates would like to expound upon before the honorable Senate Finance Committee:

We caution against any compromise that would substantially alter the ad valorem cost recovery fee concept for the operations and maintenance of commercial harbors and connecting channels currently established in Section 813 of S. 1567. Any cost recovery system for navigation improvements must recognize and be sensative to:

- The competitiveness of U.S. exports in world markets.
- The maintenance and continued growth of U.S. ports, large and small
- The competitive balance that exists between U.S. ports and economic regions.

We suggest that the fee of 0.04 per centum on the value of all commercial cargo, currently established in S. 1567, is possibly more than the maritime industry can sustain and remain competitive. We recommend that a 0.03 percentum fee be used to initiate the program with subsequent annual review of the user fee impact on foreign trade before implementing the full 0.04 per centum fee.

We are adamantly opposed to the concept of a user fee based on cargo tonnage as now being promoted by the House of Representatives Subcommittee on Merchant Marine and Fisheries. For example:

> A shipper of 60,000 tons of iron ore from Duluth to Cleveland would pay an ad valorem fee as contained in S. 1567 (.0004) of approximately $1,512. The tonnage fee for this same shipment as proposed by the House Merchant Marine and Fisheries Committee ($.14/ton) would be $8,400. This increase would be devastating to the Great Lakes iron and steel industry, which is already severely depressed.
>
> Similarly, a 30,000 ton shipment of grain (corn) from Charleston to Europe would pay approximately $1,350 under the ad valorem system and a much higher fee of $4,200 under the tonnage system. The debilitating effect of a tonnage fee is apparent on an industry that measures profits in mills per bushel, and upon a commodity that represents the largest export of the United States.

The Port System Advocates invites the Committee's attention to Title VI, Section 601 of S. 1567 whereby: "The Secretary of The Army will not initiate studies on any proposed commercial channel or harbor's project until an appropriate non-Federal sponsor has contracted with the Secretary to pay 50 per centum of the study costs."

Corps of Engineers' feasibility studies are necessarily costly in order to handle all of the federal requirements from other federal agencies in addition to fully considering the federal interest in navigation. Actually, as the Federal government now analyzes economic benefits to proposed port projects, a dollar value is assigned to local and regional economic benefits. Coupled with parallel as well as competing environmental needs, navigation studies must be handled by a lead Federal agency with a principal interest in navigation.

We fear that the "across the board" study cost sharing process embodied in Section 601 will eventually dry up the Corps' civil works planning capability. It will also dry up many needed and worthwhile navigation projects, either new ones or existing improvements at ports that can't afford the study cost sharing with no firm guarantee of a project being built. This is particularly true of interstate/international navigation projects.

Why should the Port Authority of New Orleans pay 50% of a major lower Mississippi River navigation study when the entire Mississippi River basin from Pennsylvania to Montana substantially benefits? Yet, what chance is there of Nebraska and Kentucky contributing a fair share? Similarly, what probability is there of New York contributing to a study for expansion of the Sault Sainte Marie locks? Ontario would most likely be the largest economic benefactor. We could say the same for the Chesapeake Bay and the Columbia/Snake River systems. We suggest that the National interest transcends probable emasculation of the Corps' civil works planning capability as a result of the non-Federal cost sharing now proposed in S. 1567. We recommend that the Federally sponsored navigation studies 100% Federally funded.

Finally, the O&M user fee is designed as a national uniform fee to avoid competitive impacts between U.S. ports. However, the imposition of the fee on all cargo could have a serious adverse impact on U.S. ports that compete with ports in Canada and Mexico. First, some U.S. ports could lose substantial import and export traffic between Canada or Mexico and third countries. Secondly, Canadian or Mexican ports and rail systems could attract and divert import and export traffic between U.S. inland cities and third countries. We recommend:

- Exempt the user fee from Canadian and Mexican imports and exports that are in transit through the United States.
- Apply the user fee, at the U.S. point of entry or exit, to U.S. exports and imports using Canadian or Mexican maritime ports.

In summary, we strongly support inactment of the Water Resources Development Act of 1985 and ask that you favorably consider the foregoing suggested amendments; that you protect the Federally controlled ad valorem user fee principle against substantive and debilitating amendments; and that you maintain the bill's position of equity for the Great Lakes/St. Lawrence Seaway System.

The Port System Advocates thank you for this opportunity to express our views before this Honorable Body. I am prepared to respond to any questions on this subject.

ROY F. HOFFMANN
Rear Admiral, USN (Ret.)
Vice Chairman
U.S. Port System Advocates

RFH/slf

The **Chairman**. Thank you, Admiral.
Dr. Perry.

STATEMENT BY E.L. PERRY, PH.D., PORT OF LOS ANGELES, LOS ANGELES, CA, ON BEHALF OF THE NATIONAL COALITION FOR PORT PROGRESS

Dr. **Perry**. Mr. Chairman, honorable representatives of the committee, my name is E.L. Perry. I am retired as executive director of the Port of Tacoma and also the Port of Los Angeles. I am working as a consultant full time in the Los Angeles area for the ports.

I am pleased to be here representing the National Coalition for Port Progress, a coalition of some 15 major U.S. ports, along with representatives of the port system, just represented by Admiral Hoffman and the American Association of Port Authorities.

Today we are encouraged by the recent congressional action taken on water resources legislation. While our coalition has historically opposed the ad valorem user fee in favor of other methods, we have agreed to accept it in order to pass comprehensive port development legislation that recognizes and is sensitive to the variety of impacts user charges can have.

However, it has a negative competitive impact for ports located near the borders of Canada and Mexico. In the Pacific Northwest, the North Atlantic, the Great Lakes, the gulf and South Pacific, the imposition of user fees at United States ports lessens the ability of border ports to compete for Canadian and Mexican cargo being imported from or exported to third countries. I believe that Senator Moynihan mentioned this in some of his testimony. It also gives ports in Canada and Mexico an opportunity to unfairly compete for United States cargo going to and from inland United States cities.

To illustrate our concern, in 1983, the Port of Seattle intransit cargo to and from Canada was valued at over $3 billion and represented 25 percent of Seattle's transpacific liner trade. Additionally, Seattle and its neighbor port at Tacoma are both heavily involved with U.S. Midwest cargo, and would not be major ports without this transshipment, due to the relatively small size of the U.S. Pacific Northwest local market.

In the port of Brownsville, TX, 50 percent of the cargo passing through the port is Mexican foreign trade to third countries.

Therefore, we recommend two amendments that would eliminate the competitive problem. The first would exempt Canadian and Mexican imports and exports that are in transit through the United States from the user fee. The second would apply the user fee to cargo entering or leaving the United States by truck or rail if it arrives or departs Canada or Mexico by ship.

Mr. Chairman, departing a little bit from the testimony prepared, the ports are generally agreeable to increasing the costsharing partnership with the U.S. Government. However, the ports' ability to raise revenue is really quite limited. There are some ports that have taxing authority; however, most of the ports are dependent upon raising revenues through revenue bonds. Restrictions on this ability beyond that contained in section 606 will be really a devastating impact on the revenue-sharing ability of the ports, particularly if we are going to increase the ports' costsharing responsibilities with the Federal Government.

Mr. Chairman, we must address the subject of local cost-recovery fees. Ports need to be able to charge local user fees on the broadest range of traffic allowable to pay the local share of new construction. Narrow limitations on the ability to assess local fees will be contrary to normal port cost-recovery practices. If we are now to share to a greater extent the cost of new construction, we must be allowed to establish reasonable and competitive cost-recovery fees.

Thank you, Mr. Chairman, for the ability to appear before your committee.

The CHAIRMAN. Thank you, Doctor.

[Dr. Perry's written testimony follows:]

TESTIMONY OF THE NATIONAL COALITION FOR PORT PROGRESS

Mr. Chairman, I am pleased to be here representing the National Coalition for Port Progress, a coalition of 15 major U.S. ports, along with representatives of the Port System Advocates and the American Association of Port Authorities.

As we sit here today, we are encouraged by recent congressional action taken on water resources legislation. While our coalition has historically opposed the ad valorem user fee in favor of other methods, we have agreed to accept it in order to pass comprehensive port development legislation that recognizes, and is sensitive to, the variety of impacts user charges can have.

We recognize that the fee is an essential part of the recent Senate Republican Leadership/Administration agreement, is applied uniformly on a nationwide basis and is intended to avoid competitive impacts between U.S. ports. Because of the uniform application of the fee, it appears to meet this criteria. However, it has a negative competitive impact for ports located near the borders of Canada and Mexico, in the Pacific North West, North Atlantic, Great Lakes, Gulf and South Pacific.

The imposition of user fees at U.S. ports lessens the ability of border ports to compete for Canadian and Mexican cargo being imported from or exported to third countries. It also gives ports in Canada and Mexico an opportunity to compete for U.S. cargo going to or from inland U.S. cities.

To illustrate our concern, in 1983, Port of Seattle intransit cargo, to and from Canada, was valued at over three billion dollars and represented 25% of Seattle's transpacific liner trade. Additionally, Seattle, and its neighbor port, Tacoma, are both heavily involved with United States mid-west cargo, and would not be major ports without this transshipment, due to the relatively small size of the U.S. Pacific Northwest local market.

In The Port of Brownsville, Texas, 50% of the cargo passing through the Port is Mexican foreign trade to third countries.

Therefore, we recommend two amendments that would eliminate the competitive problem. The first would exempt Canadian and Mexican imports and exports that are in transit through the United States from the user fee. The second would apply the user fee, to cargo entering or leaving the United States by truck or rail if it arrived in or departed Canada or Mexico by ship.

Additionally, Mr. Chairman, we wish to address the subject of local cost-recovery fees. Ports need to be able to charge local user fees on the broadest range of traffic allowable to pay the local share of new construction. Narrow limitations on the ability to assess local fees will be contrary to normal port cost recovery practices. If we are to now share in the costs of new construction, we must be allowed to establish reasonable and competitive cost recovery fees.

Mr. Chairman, I thank you on behalf of all of the ports in our coalition for the opportunity to be heard on S.1567, and I welcome any questions you may have.

The CHAIRMAN. Doctor, as I understand your statement, your members, representing large ports such as New York, New Orleans, Los Angeles, and Seattle now all accept the ad valorem fee concept contained in S. 1567. Is that correct?

Dr. PERRY. That is correct, sir.

The CHAIRMAN. OK.

The reason I ask this is that you know the debate we have had on this issue, and you know the rumors that are rumbling around the House. I want to make sure that your coalition, no matter what the House wants to do, is going to stand firm on these ad valorem fees as they exist in this bill.

Dr. PERRY. I am probably not entirely able to speak for all the ports; however, I have an assurance from the chairman of the committee on the large ports that they will stand behind the ad valorem fees that are represented by this bill.

The CHAIRMAN. You know, clearly, that if they will, the little ports aren't going to try to change it. So long as I have your assurance that the big ports are not going to try to change, there isn't going to be any change.

Senator MOYNIHAN. Mr. Chairman; would the chairman yield? I have given you that assurance for the biggest of them.

The CHAIRMAN. I understand that. I want to get everybody's assurance.

As I recall, Admiral, your coalition, while they support a 0.03-percent fee, you now are fully in support of the 0.04 percent?

Mr. HOFFMAN. I am.

The CHAIRMAN. Good.

I am curious about the evidence of the routing of the shipments through Canada and Mexico. You know, I have the same fear, but what evidence do we have of diversion? I am looking at other transportation costs. Is this a boogieman, or do we have some concrete evidence that this can happen or will happen?

Mr. BRINSON. Well, we certainly have some evidence that some of the major shippers are looking very closely at the prospects of this ad valorem fee and are talking opening about their options. That, of course, is enough to concern most port authorities, as you can well understand.

The ports that would be most concerned about this, of course, are those that are close to the borders, and Canada or Mexico having competing ports just across the border.

The CHAIRMAN. Are you confident that the recommendations you are suggesting, Mr. Brinson, are consistent with GATT, and they won't be subject to an argument that these are fees not fees-for-service but taxes on exports and therefore violate the Constitution?

Mr. BRINSON. Our industry has been very, very concerned about that as the debate has evolved through the last 6 years. We are now very confident, based on the reports that we get from the Office of Management and Budget, that indeed there are no problems with GATT.

The CHAIRMAN. Good.

A question for each of you: Section 606 of the bill permits non-Federal sponsors of a construction project to impose user fees in order to finance their share of the project's costs. Do I understand that ports, large and small, unanimously support this provision? We will start with Admiral Hoffman.

Mr. HOFFMAN. I think, for them to have to provide 100 percent—we are going to support this bill, but I would like to add there is a considerable concern that, if you have to provide 50 percent for all of the corps' civil work studies, then a lot of ports simply will not. It won't be done. And I think it is in the Federal interest for you to review that requirement, because there is definitely a national interest when you are talking about regions, in particular, that some of those studies be carried out.

The CHAIRMAN. You are not objecting, however, to the cost-sharing of construction; your problem is the studies that may never get off the ground at all if the port has to pay for the study, which may in the long run come to nought?

Mr. HOFFMAN. That is correct.

The CHAIRMAN. Mr. Brinson.

Mr. BRINSON. There is a general agreement in the U.S. port industry, sir, that we should support S. 606.

The CHAIRMAN. Dr. Perry.

Dr. PERRY. Yes, sir. We are in agreement with supporting that. We would like to caution, however, that any diminution of the ability of the ports to collect fees locally will certainly have a severe impact on the ports' ability to raise these moneys..

The CHAIRMAN. Thank you.

Senator Matsunaga?

Senator HEINZ. Mr. Chairman, would Senator Matsunaga yield for a unanimous-consent request?

Senator MATSUNAGA. I yield.

Senator HEINZ. Thanks, Senator Matsunaga, for yielding. I have to go to a leadership meeting at 3 o'clock.

I ask unanimous consent that my statement be made a part of the record at the appropriate point and I have one or two questions I would like to have the witnesses respond to for the record.

The CHAIRMAN. Without objection.

Senator HEINZ. I thank Senator Matsunaga and the Chair.

The CHAIRMAN. I thank the Senator for coming.

Senator Matsunaga.

Senator MATSUNAGA. Thank you, Mr. Chairman.

I believe all of you were here and present in the room when we questioned the principal sponsor of the measure, Senator Hatfield, and heard his response to my question that, considering extenuating circumstances, the island State of Hawaii and the Pacific Island States could be treated differently. You would not object to that, I take it?

Admiral Hoffman.

Mr. HOFFMAN. I would not object.

Senator MATSUNAGA. Mr. Brinson.

Mr. BRINSON. We have no position on that, sir, although we have given a great deal of attention and concern to the special circumstances of our offshore interests—Puerto Rico, Hawaii, of course, and the Pacific Islands.

The ad valorem fee, in concept, envisions the navigation system as a national system. If you look at it on a port-by-port basis, you see imbalances all over that system, one way or the other. Los Angeles/Long Beach is now our leading customs entry port in terms of Customs revenues.

Senator **Matsunaga**. Except, of course, we don't have railroads, we don't have trucks.

Mr. **Brinson**. I understand that, sir. I appreciate the point that was made. Also, the State of Hawaii Department of Transportation is a member of our association, and we have been working very closely with them in this concern.

Senator **Matsunaga**. I see.

Dr. Perry? You have no objections?

Dr. **Perry**. I have no objection, sir, but I would like to emphasize the point that Mr. Brinson was making. If you look at the equity of the system, we are making some very, very great concessions on the part of the large ports on the west coast, particularly Seattle, Tacoma, Long Beach, and Los Angeles, because we have virtually no maintenance in any of those ports. So we are really contributing to a national user fee system without really gaining any benefits from it from our standpoint. I think that should be taken into consideration when you start making exemptions to the bill.

Senator **Matsunaga**. Thank you very much.

The **Chairman**. Senator Bradley.

Senator **Bradley**. Thank you very much, Mr. Chairman.

I think Senator Moynihan covered some of my concerns, as well as Senator Heinz. I will reiterate some of their points. Is it your expectation that this four one-hundredths of 1 percent ad valorem fee will increase or remain fixed?

Dr. Perry.

Dr. **Perry**. Well I suppose I am really not qualified, except you asked for an opinion. My opinion is that it will probably go up as time goes by.

Senator **Bradley**. Would you elaborate on that?

Dr. **Perry**. Yes; I think the evidence on almost every major cost-recovery system that the Federal Government has embarked on has escalated over the years. And if there is an inflation factor that will be cranked into this, and I suppose there will be a small inflation factor no matter what, in order to meet the cost-sharing benefits that are shown in this, yes, I think that that fee will go up.

Senator **Bradley**. How much? How soon?

Dr. **Perry**. Well, Senator, if you can tell me what the inflation factor will be, I can tell you pretty well what it is likely to be.

Senator **Bradley**. Are you saying it is going to go up with inflation?

Dr. **Perry**. I think it is going to go up with inflation, and I think it probably will tend to rise as subsequent administrations attempt to obtain additional revenues from the participants, the ports.

Senator **Bradley**. Mr. Brinson, what do you think?

Mr. **Brinson**. My view would differ just a little bit. I think that the base upon which this ad valorem tax is assessed is probably going to grow rather steadily through the end of this century.

If we were to get very, very serious, though, about what needs to be done in the way of operations and maintenance of the deep-draft navigation system, then there would be a need for it to go up very quickly, because we are woefully lacking in our efforts to take care of it.

Senator **Bradley**. Let's try to quantify this. What does it have to be to meet the needs you have just talked about?

Mr. **Brinson**. Well, I think in the immediate future the 4 mils will suffice. When I say "immediate future," probably through this decade. And that being because the base upon which it is assessed is very likely to go up. We are very hopeful that that base is going to go up on the basis of exports from the United States as opposed to imports; but the base is going to go up, and that should—again, we would be hopeful—take care of inflation.

However, we need to be doing more in the way of operations and maintenance of our deepdraft navigation system.

Senator **Bradley**. Mr. Hoffman, what is your opinion?

Mr. **Hoffman**. I think that this Nation and this Congress is going to be a lot more alert to international trade than they ever have been before. I do not think that we will continue to dredge the rivers in Milwaukee, for example, for reasons that that is the way we have always done it. I think we are going to be a lot more discriminating now that we are involved in paying for it, even in Crystal City, MO.

Senator **Bradley**. Well, there is a name out of the past. [Laughter]

Do you have any other thoughts on this matter?

[No response.]

Senator **Bradley**. Who is going to be responsible for collecting the user fee?

Mr. **Brinson**. I think that is a very practical question, and we are very eager to hear the answers. However, we know the Office of Management and Budget has been busily reviewing the options over the last 2 to 3 weeks, and from what we can assess of their work, it does look like they have come up with a workable system with the Customs Service.

Senator **Bradley**. Does anyone want to add how else it will work? Dr. Perry?

Dr. **Perry**. What Mr. Brinson has said is correct. There was supposed to be a report out from the committee that was formed under this OMB guidance that was chaired by Customs persons. It was due out this week, to the best of our knowledge; but we don't know what the results of this will be.

Senator **Bradley**. Do any of you believe that the fee will disadvantage us vis-a-vis our neighbors to the north or the south, that is, the Canadian or Mexican ports? Mr. Hoffman?

Mr. **Hoffman**. I think one of the important features of this bill is that it does require initiation by the Government of the United States with the Government of Canada to reduce or eliminate the tolls on the Seaway, for example. And I think that many Canadians will welcome this, so it will put a little pressure to bring down the cost of operating the seaway.

Senator **Bradley**. Mr. Brinson? Mr. Perry?

Mr. **Perry**. Yes, sir, if I may, sir. Yes, we think that it will generate, in its present form, some competitive disadvantages to the ports that are right on the border—Brownsville, TX; Seattle; New York/New Jersey.

The question was asked a little bit earlier if there is any evidence of actual diversions. There is already evidence of diversions as the result of discrepancy between some of the shipping charges, particularly in the New York and New Jersey area, and Seattle and Tacoma area, where the cargo actually does get transshipped now to the detriment of the two port complexes.

Senator BRADLEY. Do you think this will increase that diversion?

Dr. PERRY. It has the possibility of doing that. And, as such, in my testimony we recommended that those cargoes be exempt from the bill itself.

Senator BRADLEY. Which cargoes are you referring to?

Dr. PERRY. Cargoes that either come through Canada and into the United States. I'm sorry, we are saying that we do not want to exempt those; we want to add to that so that they do not—I almost made a very serious faux pas; forgive me.

Mr. BRINSON. Senator, could I comment on that question?

In our testimony, we put the port industry on record as accepting this user-fee concept; that is, a user fee for deepdraft nagivation systems operations and maintenance, and additional costsharing.

However, our industry is very, very concerned about the long-range cumulative impacts of the whole series of user fees that are now being proposed and that in fact, if they are put in place, will impact on the flow of this Nation's waterborne commerce. This is one. We are talking about Coast Guard user fees; we are talking about additive Customs user fees; we have been discussing today additional inland waterway user fees. All of those will have a cumulative impact that over time could very well impact on the competitiveness of U.S. products in the international marketplace.

Senator BRADLEY. So, is your counsel "Be cautious"?

Mr. BRINSON. It has been for a long, long time, yes. [Laughter.]

The CHAIRMAN. Gentlemen, thank you very much. You have been very, very helpful and we appreciate it.

Now, if we might have a panel of Wayne Yamasaki, Les Sutton, Joseph Farrell, and Marc Fink. And I believe that Senator Matsunaga would like to introduce the first gentleman on the panel.

Senator MATSUNAGA. Thank you, Mr. Chairman.

It is my pleasure to introduce a transportation authority with a unique perspective regarding the question of instituting the system of user fees for the Nation's ports and waterways. He is Hon. Wayne Yamasaki, director of the Hawaii State Department of Transportation. And since Mr. Yamasaki is responsible for oversight of harbors, airports, and highways within the only chain of islands who have membership in the Union of States, his vantage point on this subject should command our attention.

Accompanying Mr. Yamasaki as his resource person is Mr. Calvin Tsuda, planning engineer of the harbors division of the Hawaii Department of Transportation.

The CHAIRMAN. I am sure they are quite voluminous, Senator, but we will get them all in.

Senator MATSUNAGA. I can think of no one with stronger experience in public service management who could provide us insight on the user fee issue from the standpoint of an insular jurisdiction.

I am pleased to present Mr. Wayne Yamasaki.

The CHAIRMAN. Gentlemen, we will take you in the order that you are on the panel. If you will follow the same request I made before, your statement in its entirety will be in the record. And if you could hold your oral statement to 5 minutes orally, it would be helpful.

Mr. Yamasaki, why don't you start?

[The statement of Joseph W. Hartley, Jr. follows:]

Pineapple Growers Association of Hawaii
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OFFICE OF THE PRESIDENT

STATEMENT OF PINEAPPLE GROWERS ASSOCIATION OF HAWAII

TO THE

SENATE COMMITTEE ON FINANCE

Room SD-215, Dirksen Senate Office Building
Washington, D.C.

Regarding

THE PORT, WATERWAY USER FEES

September 10, 1985

Submitted by Joseph W. Hartley, Jr., President
Pineapple Growers Association of Hawaii, September 4, 1985

Introduction

This statement is submitted on behalf of the Pineapple Growers Association of Hawaii (PGAH). Our comments are directed to the ad valorem (a.v.) tax of 0.04% on cargo loaded or unloaded at United States' ports, and specifically to the substantial adverse effect this proposed tax would burden upon Hawaii's pineapple industry. We strongly object to the a.v. tax as it would apply to Hawaii's island ports and respectfully request the Committee to exempt Hawaii from the tax.

Pineapple Industry in Hawaii

PGAH is a non-profit trade association representing all of the growers of fresh and canned pineapple in the State of Hawaii. The member companies of the Association are: Dole Hawaii Division, Castle & Cooke, Inc.; Del Monte Corporation; and Maui Pineapple Company, Ltd. Pineapple is grown commercially on four islands:

Lanai	12,400	acres
Maui	8,822	"
Molokai	2,000	"
Oahu	11,778	"
	35,000	acres

Materials, Supplies, Equipment from Overseas - Taxable

All of the materials, supplies and equipment used by the pineapple industry are obtained by means of overseas ocean transportation, by direct pineapple company purchase or through local distributors, from overseas suppliers. Of minor exception are items, urgently needed, that can be flown in by air. No other means of transportation is available to Hawaii. These are the materials, supplies and equipment used in pineapple agriculture, in can making, pineapple processing, packing, labeling and casing.

Intra-State Pineapple Shipments - Taxable

As described above, pineapple is grown commercially on four islands. Two of these islands, Lanai and Molokai, representing forty-one percent of pineapple producing acreage in the state, do not have processing facilities. All of the pineapple harvested from these islands is shipped by barge intra-state to the Honolulu ports on Oahu. The tax would apply to the value of the fruit at this stage and again, later, when shipped overseas in processed form or as fresh. Also subject to the tax would be the wharfage paid by the pineapple companies on this fruit and the fruit bins, and on the bins returned empty to the outer island plantations.

The ad valorem tax on materials, supplies and equipment used in pineapple agriculture and processing operations, and on fresh pineapple barged intra-state in a year's time, would be as summarized below:

Value of materials, supplies and equipment - 1984 (compiled from pineapple company reports)	$70,493,800
Value of fresh pineapple barged intra-state (based on value, Hawaii Department of Agriculture)	21,796,000
Total	$92,289,800
Ad Valorem Tax - 0.04%	$ 36,916

So all of these costs of materials, supplies and equipment, and the value of the fruit barged intra-state, would be taxed. And as shall be noted, the value of the fresh market fruit and the value added, processed fruit and juice, that are destined for overseas transport through Hawaii's ports would be taxed, and subsequently taxed again.

Outgoing Processed Fruit and Fresh Pineapple - Taxable

Eighty percent of pineapple grown in this island state is processed into solid fruit and juice products. Essentially all of this production is shipped out of Hawaii by overseas transportation through Hawaii's ports. The other twenty percent of the pineapple is grown for the fresh market -- fifty-four percent of fresh market pineapple is shipped overseas in refrigerated containers through Hawaii's ports by ocean transportation. The ad valorem tax on outgoing shipments of processed and fresh pineapple through Hawaii's ports would be as summarized below:

Value of fresh and processed pineapple and pineapple byproducts - 1984 (compiled from pineapple company reports)	$249,548,000
Deduct, value of fresh pineapple shipped by air and local consumption (Source: Hawaii Department of Agriculture)	21,896,000
Value of outgoing pineapple shipments through Hawaii's ports	$227,652,000
Ad Valorem Tax on Shipments - 0.04%	$91,061

Processed Fruit and Fresh Pineapple at Mainland Ports - Taxable

Mainland United States is, by far, the major market for Hawaii's processed and fresh pineapple fruit. Pineapple is in direct competition with other fruits and juices in this market. As with any other cargo unloaded through mainland ports, Hawaii's pineapple would be subject to the tax. Foreign pineapple, processed and fresh, unloaded at mainland ports would be subject to a one-time assessment of the tax. Most all other fruits, processed and fresh, are produced on the mainland -- transport to market is by truck and rail -- no added a.v. tax.

Summary

We have pointed out that Hawaii's pineapple industry would pay the new tax on the materials, supplies and equipment used in agricultural and processing operations, and on fresh pineapple barged intra-state. The second assessment of the tax would be on outgoing shipments of processed and fresh pineapple through Hawaii's ports. And the tax would be applied for a third time -- as with any cargo unloaded through mainland ports, Hawaii's pineapple would be subject to the a.v. tax -- and the tax would be levied upon that value already taxed, i.e., outgoing through Hawaii's ports, plus the value added of ocean transportation costs from Hawaii. Conceivably, the tax base also could include the value added of the a.v. tax assessed earlier in Hawaii, if such could be passed along to the customer.

Conclusion

The cost of the tax on pineapple at mainland ports would in itself be an additional transportation cost disadvantage for Hawaii in competition with mainland produced fruits and fruit juices. To apply the tax also, in and out of Hawaii's ports, would impose an unfair and unjust burden upon our industry. For the reasons contained in this statement, we respectfully request the Committee to exempt Hawaii, this island state, from the ad valorem tax.

JOSEPH W. HARTLEY, JR.
President, Pineapple Growers
Association of Hawaii, and
President, Maui Pineapple Company, Ltd.

STATEMENT BY WAYNE YAMASAKI, DIRECTOR OF TRANSPORTATION, STATE OF HAWAII, HONOLULU, HI

Mr. YAMASAKI. Thank you, Mr. Chairman.

On behalf of Governor Ariyoshi I would like to extend our appreciation for the opportunity to testify before your committee today.

The State of Hawaii has grave concerns concerning the proposals as they apply to U.S. insular areas. In Hawaii, like the other U.S. Pacific islands, harbors and shipping networks are a lifeline for basic needs. In the case of Hawaii, we import 80 percent of our goods and services that we need for daily sustenances. Ninety-eight percent of these imports are shipped to the islands by surface transportation. There is no realistic alternative for shipping the goods we need for daily living besides ocean shipping.

Each man, woman, and child in the islands will be directly affected by the proposal that is in the bill itself.

What I would like to stress is that the State of Hawaii is a State of islands. We have five major islands with seven major ports. And perhaps if I could cite an example, we will have a better picture of the impact that the State will have.

The way the bill is written right now, it does provide that there will be a charge, ad valorem, 0.04 percent per thousand, once a cargo is imported or exported. The only exception is that, if the cargo is then reloaded upon the same vessel, the charge would be applied just once.

In the case of Hawaii, as indicated, 98 percent of our goods and cargo come in by ship. We ship cargo from the west coast, whether it is imported cargo, whether it is televisions coming in from the Far East unloaded in the west coast, assuming the ad valorem is applied at that point again. Cargo is then breaked and then shipped to Hawaii again. The way the law is written, we would interpret that there would be an ad valorem tax imposed upon it again once it docks in Honolulu.

In the case of Hawaii, Honolulu Harbor is our hub for the entire State. Cargo is then breaked at that point and then shipped to the neighbor island ports, as I have indicated. We have seven ports throughout the State. This, again, would require them to tax the cargo again once it lands in the other areas.

What I am trying to stress here is that Hawaii is unique, in the sense that because of our system of transportation, and the way the State is configured, it would be having an adverse impact on the population in terms of how many times this tax would be applied to them.

Right now, the citizens of Hawaii pay 20 to 30 percent more for our bread than you do on the mainland, in terms of cost of living. The additional ad valorem imposed will not only have impact on the residents but also the military. The military stationed in Hawaii is a major industry in Hawaii. Right now, 13 percent of Matson's cargo containers that are shipped through Honolulu harbor are military destined. So, based on the ad valorem, this would again be applied to military cargo coming into the State. I am not referring to cargo that goes directly into Pearl Harbor: I am referring to cargo that is unloaded at Honolulu Harbor. As I indicated, the impact would be felt tremendously directly by the residents of Hawaii.

The State of Hawaii to date has invested over $150 million in construction money for pier work, yards, sheds, and equipment. Over the next 6 years we have programmed an average of $9.8 million annually for capital improvement projects, and this is all State-funded, and an additional $3.7 million for maintenance of these facilities. In addition to that, we program an average of $200,000 for maintenance dredging of the berthing areas within the harbors throughout the State.

The State of Hawaii is spending a tremendous amount of money right now to maintain and operate our facilities.

We feel that the proposed legislation will have a very adverse impact on our development plans. It will hinder our port development, increase the ocean freight costs for the residents and people living in the insular areas, which will be paid by all Americans on the U.S. islands, insular islands, and they will be feeling this directly without any increase in services.

I would therefore respectfully request that the Senate consider some type of exemption for the U.S. insular areas in terms of the application of this ad valorem tax.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Mr. Sutton.

[Mr. Yamasaki's written testimony follows:]

TESTIMONY OF
WAYNE J. YAMASAKI
DIRECTOR
DEPARTMENT OF TRANSPORTATION
STATE OF HAWAII
BEFORE THE SENATE COMMITTEE ON FINANCE

SEPTEMBER 10, 1985

Mr. Chairman and Members of the Committee, I am Wayne J. Yamasaki, Director of Hawaii's Department of Transportation. On behalf of Governor George R. Ariyoshi, I would like to extend our appreciation for this opportunity to testify before this Committee on the crucial matters of port user fees and cost sharing for navigational improvement projects.

We have grave concerns regarding these proposals as they are applied to the U.S. insular areas.

In Hawaii, like the other U.S. Pacific Islands, our harbors and shipping networks are lifelines for our basic sustenance.

There are no other realistic means to transport the goods we need for daily living. We have no railroads and trucks that are available to the other states.

We import 80% of all the goods we require and 98% of this amount is transported by ocean shipping. In terms of overseas cargo movement, Hawaii imports almost twice the amount of cargo exported, unlike most major U.S. ports where overseas exports exceed imports. This difference is primarily due to our need to import consumer goods such as food, clothing, materials for our buildings, appliances, cars, petroleum, paper--almost everything we use in our day-to-day living. All commodities not made from air, coral, lava, water or semi-tropical plants, must be transported to our Islands primarily by ocean vessels to our islands.

The real beneficiaries of our harbors are not simply the shipping companies, businessmen or the commercial importers, but each and every one of our residents including the military interests in Hawaii.

Here lies our problem with the application of the proposed cost recovery and cost-sharing concept to our Islands. These proposals are intended to recover or reduce some Federal costs from the selected users of specialty services or facilities. In most ports of the country this concept would meet this intent. However, for our Islands, the net result would be a new tax burden for every single resident who already bears the burden of high transportation costs.

Under the pending proposal of a 0.04% ad valorem tax, it is estimated that Hawaii's population will be paying annually an additional $2.4 million at the ports for its imports. This amount will, in effect, raise Hawaii's import tariff by 37%. But collection at the ports gives only a partial indication of the cost increases which will be passed on, through higher prices to consumers and businesses. Recognizing that ad valorem collection on imports make up $2.4 million of the total tax and the vast majority of these will originate in mainland U.S. ports, the initial collection of the user fee at these mainland ports and the resulting price increase will be closer to $5 million.

For overseas exports, the ad valorem concept will impose another (new) transportation cost of $500,000 annually to Hawaii's products which will, in effect, increase Hawaii's export tariff by 26%. This additional cost will decidedly put Hawaii's existing and future exports at a competitive disadvantage. Take, for example, one of our primary exports, sugar. Hawaii Sugar Planters Association's (HSPA) believes that any proposal which adds an additional transportation cost burden would be particularly devastating to their industry. They already pay one of the highest transportation costs in their industry and already must absorb these expenses because of tough intra-industry competition.

The cost recovery proposals place an inequitable burden on Hawaii. During the period of FY 1981 to 1984, the U.S. Army Corps of Engineers expended an average of about $900,000 annually for operations and maintenance (O&M) for our State.

The estimated total annual ad valorem collection of $2.9 million from Hawaii is about 320% greater than the average annual Federal O&M expenditure over these four (4) years. Compared to the intended recovery of 40% of Federal O&M costs, Hawaii will be paying eight (8) times the intended recovery amount.

The most significant result of the imposition of an ad valorem tax, which takes more out of the Island economies than it puts back in, would be to reduce the disposable income of consumers (without increasing production or services). This direct loss in spending power causes fewer goods and services to be purchased within the region and further reduces the incomes of the producers and suppliers of those goods and services. This "multiplier effect" magnifies the impact of such an income loss. The direct costs of the tax should, therefore, be viewed as only the initial portion of the negative impact.

It must also be noted that Oahu serves as hub of our port system where all major overseas cargoes are handled. Distribution of imports are then made by interisland barges to the other five (5) population centers of Kauai, Molokai, Maui, Lanai, and the Big Island of Hawaii. Oahu also serves as a consolidation point for Neighbor Island exports destined for overseas shipment. The reason for this system is that shippers cannot economically make direct overseas calls to these smaller communities. This is the reality of transportation economics for small markets separated by open ocean. Under the port user fee concept, this arrangement of shipping to the Neighbor Islands could conceivably lead to an inequitable situation of multiple assessment of the tax on cargoes stored, repackaged or processed and then shipped from Oahu.

Because of our great dependence on our ports, Hawaii is continually improving and maintaining our shoreside facilities to keep up with the ever changing shipping technology and demands. To date Hawaii has invested over $150 million in piers, yards, sheds and equipment. Over the next six (6) years, we have programmed an average of $9.8 million annually for capital improvements and about $3.7 million per year for maintenance of these facilities. The programmed maintenance expenditure of $3.7 million includes over $200,000 per year for maintenance dredging of the berthing areas.

However, this program may be jeopardized by the Treasury proposals which will restrict the use of tax-exempt industrial revenue bonds from the financing of facility improvements which include harbor facilities. This Treasury proposal will compound the problem of local cost sharing in navigational improvement projects since Hawaii will need to finance its share through bond financing.

As a State located in the middle of the Pacific Ocean, Hawaii endeavors to play an active role in advancing America's interest in the Pacific, but our island economic situation must be clearly recognized and understood in the framing of public policy. We feel strongly that our Country's interests would not be well served by imposing cost recovery and cost sharing for our Pacific ports. At this time, the implementation of these proposals and the proposed restrictions on the use of tax-exempt bonds will limit our ability to build and maintain our vital port systems. Additionally, our efforts to advance such national priorities as international trade, economic growth and tourism will be greatly hindered.

For the insular areas of the U.S., instead of promoting a more rapid means of harbor development and shipping industry development, we anticipate that port development will be hindered, ocean freight costs will increase and in the end, the Americans on U.S. Islands will ultimately pay.

We urge your serious consideration and understanding of our situation in your national policy making process.

We respectfully request that the U.S. insular areas be exempted from port user fees and local cost-sharing requirements of navigational improvement projects.

Our harbors and shipping networks are our lifelines. They are vital factors in the daily lives of our peoples and are imperative to our national roles in the Pacific-Asian region.

May I again thank you for this opportunity to testify.

STATEMENT BY L.E. (LES) SUTTON, CHAIRMAN, NATIONAL WATERWAY CONFERENCE, INC., NEW ORLEANS, LA

Mr. SUTTON. Thank you, Mr. Chairman.

I am Les Sutton of DRAVO Mechling Corp., a barge line out of New Orleans. I am also chairman of the National Waterways Conference. My comments will primarily be on title VIII, the inland navigation taxes.

I feel sort of out of place here commenting on this bill, and not vigorously opposing it. The arguments against inland waterway user charges are still there. Senator Hatfield and Senator Bentsen mentioned some of them.

The industry is in terrible shape financially, and there are still many of those in our business who, if they were here today, would say, "We can't afford any more user charges." And we really can't. However, many of us are willing to say that if this bill really puts this issue to rest until 1996, then it is probably an acceptable compromise.

We, of course, would agree with Senator Hatfield's suggestion to backload the taxes as much as possible.

I guess this bill proves that the definition of a good compromise is that state of equilibrium where everyone is equally unhappy.

My written statement recommends a number of clarifications in the bill which need to be made to ensure that the cargoes we transport are not double-taxed. There are a number of situations where we overlap the deepdraft cargoes.

I was aware of the agreement earlier this year between the Senate leadership and the administration regarding this bill, and I had some concern when Mr. Stockman resigned. I hope this committee will ensure that that agreement is maintained.

You and many others on this committee who have lived through the history of waterway improvements versus user charges recognize that this bill represents a middle ground between two factions which were miles and miles apart.

Our industry is suffering. And for the same reasons, our customers are hurting. Grain embargoes and the strong dollar have taken away much of our grain export market. Problems in the steel industry have reduced those barge shipments of steel to a fraction of where they were. We geared up to handle those tremendous coal exports that were forecast, and they didn't move.

Let me digress a minute and talk about that, because I think it is a good example of why I'm supporting a bill that I really probably shouldn't because it imposes a tax on our industry that we can't afford. But I watched that coal export boom develop, and I listened to the European buyers come over and criticize us for not being ready, not having the infrastructure in place. And the market really did go away. And it went, by the way, to South Africa and back to Poland, whose problems with their production of coal at that time were causing the boom to occur. And now we sit here today and watch problems in South Africa that might give us another opportunity to grab onto that market, and we are not ready again.

I guess I support this bill so that, if the opportunity comes around a third time, we will be ready with our infrastructure.

But even though things look bleak for us in the industry, we can't give up. And you and Government can't give up on us, either. Because America needs its most efficient method of transportation to compete in those export markets and to compete in our domestic markets as well. Thank you.

The CHAIRMAN. Thank you.

Mr. Farrell.

[Mr. Sutton's written testimony follows:]

STATEMENT OF L. E. (LES) SUTTON
CHAIRMAN OF THE NATIONAL WATERWAYS CONFERENCE, INC.
BEFORE THE COMMITTEE ON FINANCE
UNITED STATES SENATE
WASHINGTON, D.C.

September 10, 1985

My name is L. E. (Les) Sutton. I am President of the Dravo Mechling Corporation of New Orleans and Chairman of the Board of the National Waterways Conference, Inc., in whose behalf this statement is presented. The Conference, now in the final weeks of its 24th year, is a nationwide association of waterway-related enterprises in farming, refining, mining, manufacturing, shipping, barging and associated industries. It is the Conference's purpose to show the importance of American waterways and ports in terms of public value and enhancement of overall economic growth, and to promote sound and far-sighted national waterways policies. Joined in support of our organization are 400-plus businesses, industries, state and local entities, ports and terminals, utilities, cooperatives, and other waterway proponents.

We appreciate this opportunity to share with members of the Senate Finance Committee our views on S. 1567, the Water Resources Development Act of 1985, and, more specifically, our observations and concerns about Title VIII (Navigation Taxes).

These are extremely hard times in America's river valleys. Most river industries are in a depressed state: petroleum, coal, iron and steel, aluminum, chemicals, agriculture, fertilizer, paper and wood products, and building materials. For a variety of reasons, demand has dropped off and lower-than-expected bulk commodity volumes have hurt ports, terminals and bargelines alike. The barge and towing industry is in particularly bad shape, faced with a surplus of marine equipment that has depressed rates, in many cases, to below-cost levels.

The Illinois Department of Agriculture recently reported that a total of 910 covered hopper barges used to transport grain and soybeans were located in fleets along the middle stretch of the Mississippi River — 361 of them loaded and 549 empty. Along the Illinois River, the agency listed 297 barges, with only 140 of them loaded. The lack of waterborne commerce has also adversely affected countless waterway communities, too. In Greenville, Mississippi, for instance, some 1,000 rivermen have been laid off since 1981 and 16 barge companies have gone out of business. And these are not isolated statistics. Sadly, they are all too representative of the crisis facing the entire barge and towing industry.

As if the situation wasn't bad enough, the legislation before the committee, S. 1567, calls for a 10-cent increase in the tax on fuel used by tugs and towboats in moving cargo on certain specified shallow-draft inland waterways. The new provision, if enacted, will double the tax to 20¢ per gallon and place additional hardship on an industry which is struggling for its economic survival. The only salvation is the fact that the legislation delays the tax for more than two years and also phases in the additional tax in 1-cent increments over the following 10 years. Those stipulations make the proposed fuel tax increase, onerous though it is, a little easier to swallow.

With specific reference to the pending legislation, S. 1567, we are greatly troubled by the vague and often incomplete definitions contained in Title VIII, Part B (Harbor Maintenance). We fear that section, as currently drafted, is subject to misrepresentation that could place an ad valorem cargo fee on inland navigation — contrary to the intentions of those who crafted the fuel tax and user fee provisions contained in this bill.

The Stockman-Senate Agreement

Title XIII of the pending legislation embodies the compromise on cost sharing for navigation projects which was reached earlier this summer following a series of meetings between David A. Stockman, who was then Director of the Office of Management and Budget, and several leaders of the United States Senate. The agreement covered both shallow-draft inland navigation, which is represented in Part A of Title XIII, and deep-draft channels, to which Part B obviously relates.

A colloquy outlining the terms of the Stockman-Senate agreement appeared in the Congressional Record of June 21, 1985. Sen. Robert J. Dole, the Majority Leader, described the specifics of the understanding as follows:

"USER FEES FOR HARBOR MAINTENANCE

> "[A] 0.04 percent ad valorem tax on imports and exports to recover 30 to 40 percent of Corps of Engineers harbor operations and maintenance expenditures. Money raised by this tax will be deposited in a dedicated O&M Trust Fund."

The general understanding at the time was that the proposed ad valorem tax was to apply only to deep-draft commerce moving through coastal and Great Lakes ports — ports having depths of greater than 20 feet — and not to shallow-draft inland navigation. Terms such as "harbor" and "imports and exports" were clearly intended to cover deep-draft shipping. Note also that revenues from the ad valorem tax are to be deposited in an O&M Trust Fund dedicated to financing a share of deep-draft O&M costs. A few paragraphs below, in the colloquy, Sen. Dole had this to say about shallow-draft navigation:

"INLAND NAVIGATION

> "In exchange for the administration dropping its insistence on large new user fees on the inland system, it has been agreed that 50 percent of the cost of new inland navigation lock and dam construction projects in this bill will be funded from receipts contained in the Inland Waterways Trust Fund. In addition, it has been agreed that the existing fuel tax will be increased from 10 cents a gallon to 20 cents a gallon over 10 years beginning January 1, 1988. ***"

It should be noted that this explanation of the Stockman-Senate agreement as it affects "inland navigation" refers primarily to an increase in the waterways fuel tax initially imposed in the Inland Waterways Revenue Act of 1978, otherwise known as Public Law 95-502. Nowhere in this portion of the June 21 colloquy is an ad valorem fee on cargo listed as part of any new user tax which must be paid by shallow-draft inland navigation in return for the White House to "drop its insistence" on "large new user fees on inland waterways."

Definition Problems in Title XIII

With respect to the imposition of ad valorem taxes, the operative provision in Title XIII is Section 813, which states as follows:

> "Sec. 813. (a) There is hereby imposed a fee on the use of any commercial channel or harbor within the United States by a commercial vessel.
>
> "(b) The amount of the fee imposed by subsection (a) with respect to any commercial vessel shall be equal to 0.04 per centum of the value of any commercial cargo loaded onto or unloaded from such vessel at any commercial channel or harbors within the United States.
>
> "(c) The fee imposed under this section shall not apply to any vessel to the extent the cargo unloaded from such vessel was loaded upon such vessel at the same commercial channel or harbors."

From this section, it would appear that the ad valorem fee would apply to shallow-draft as well as deep-draft shipping. Although several terms are defined in Section 811, there is unfortunately no definition of "commercial channel or harbor" in Title XIII. As is well known, commercial channels or harbors are not limited to the deep-draft navigation system. There are many commercial channels or harbors on the shallow-draft inland waterway system as well.

In the colloquy of June 21, 1985, Sen. Dole referred to the Stockman-Senate agreement as covering "harbor construction cost sharing" and included a table showing non-Federal contributions which would be required for three types of such projects, including harbors from "0 to 20 feet" in depth. Such a definition would clearly include all inland harbors, since most have depths in the range of 9 to 12 feet.

The agreement on cost sharing for port contribution is embodied in Title XI (Harbor Construction) of S. 1567. Section 602 specifies that non-Federal sponsors of projects for "commercial channel or harbor construction" must bear a certain specified percentage of construction costs, including projects "no deeper than twenty feet." This would appear to cover shallow-draft inland harbors. However, to make the issue even more confusing, a definition of "commercial channel or harbor" is contained in Section 608, which reads as follows:

> "Sec. 608. For the purposes of this Act, the terms —
>
> "(1) 'commercial channel or harbor' shall mean any channel or harbor, or element thereof, which channel or element is not considered an inland waterway and which is open to public navigation, and which is capable of being utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by means of commercial vessels; or any channel or harbor, or element thereof, to the depths and widths the construction of which was initiated by non-Federal sponsors after July 1, 1970, and prior to January 1, 1981; or any channel or harbor, or element,

> to the depths and widths that may be constructed under the terms of sections 602 or 604 of this title: Provided, That such term does not mean local access or berthing channels or channels or harbors constructed or maintained by non-public interests: And provided further, That such term shall be considered for the Columbia River, Oregon and Washington, to include the channels only up to the downstream side of Bonneville lock and dam, Oregon and Washington;"

The first portion of this definition appears to exempt any "channel or element" which is "not considered an inland waterway." It should be noted, however, that more than 1,200 miles of inland waterways consist of deep-draft channels, such as those which serve Albany, Philadelphia, Baltimore, Mobile, New Orleans, Houston, and Portland, Oregon. And to make the definition in Section 608 even more confusing is the last provision, specifically including in the definition of "commercial channel or harbor" the deep-draft channel on the Columbia River downstream from Bonneville Lock and Dam. What about all the other deep-draft channels along the lower reaches of inland waterways?

An obvious question is this, How can "commercial channels or harbors" having depths of 0 to 20 feet be covered in one context (Section 602) when they seem to be exempted in another portion of the same title (Section 608)? It is in Title XIII, however, that the lack of a precise definition of "commercial channel or harbor" becomes most significant.

The proposed ad valorem fee is to be imposed on the use of any commercial channel or harbor within the United States by a "commercial vessel." Section 811(a)(2) defines "commercial vessel" as "a vessel engaged in waterborne commerce." That really sheds no new light on the definitional problem, since barges as well as ships engage in waterborne commerce.

"Waterborne commerce," in turn, is defined in Section 811(a)(6) as "any commercial activity relating to the carriage or transportation of commercial cargo by a commercial vessel." Again, there's nothing in this definition to disprove that "waterborne commerce" is something in which barges are engaged. On the contrary, it would seem to establish that both ships and barges are involved in waterborne commerce.

There is only one key term mentioned in Section 813 left to be defined: "commercial cargo." Section 811(a)(1) says this means "any commodity, class or category of commodities, or classification of articles of waterborne commerce." Under that definition, it would appear that "commercial cargoes" transported in shallow-draft tows by tugs and towboats would be covered. So here again, the provisions of Title VIII, Part B, do not clearly exclude shallow-draft navigation.

Needed: A Water-Tight Definition

What is needed in Title VIII are explicit instructions on who is to pay the ad valorem fee — and who is not to pay. In keeping with the terms of the Stockman-Senate agreement, we strongly urge the Committee to make sure that shallow-draft barge transportation subject to the fuel tax specified in Part A of Title VIII is exempted from the ad valorem tax authorized in Part B, even though barge tows might move on deep-draft channels, or into or out of deep-draft harbors, or carry waterborne commerce consisting of exports or imports. If a barge shipment is subject to the fuel tax, it should not also be subject to the ad valorem fee.

The term "Harbor Maintenance" used to describe Part B is needlessly vague and too easy to misinterpret, since there are shallow-draft harbors as well as deep-draft harbors. Likewise, the phrase "Inland Waterways" is also misleading, since there are deep-draft inland waterways as well as shallow-draft inland waterways.

Instead of simply "Inland Waterways," Part A should properly be headed "Shallow-Draft Waterways," so that intracoastal as well as strictly inland waterways would be covered. And instead of Part B being titled as "Harbor Maintenance," the heading should be changed to "Maintenance of Deep-Draft Port Access and Connecting Channels." In addition, Section 813 needs to be amended to make it clear that, while the ad valorem tax may be collected in ports, the revenue is to be used for maintenance of deep-draft access and connecting channels. In the case of New Orleans, for instance, most maintenance dredging is required some 90 miles downstream from the port; there is virtually no dredging needed in the harbor or its vicinity.

We submit that the doubling of the bargeline fuel tax to 20¢ a gallon, as dictated in Title VIII, Part A, of the legislation before the Committee, already places a significant burden on an industry which can scarcely afford the sacrifice. To keep Title VIII, Part B, as presently worded, however, would be to leave open the possibility that an additional tax or fee could be levied on barge and towing companies and/or shallow-draft commerce. That possibility causes us deep concern, and it should give pause to anyone interested in equity. With the fuel tax increase, shallow-draft navigation will already be paying. To top that requirement with an ad valorem tax on shallow-draft cargo would be unfair and unreasonable. Unless this Committee makes the necessary revisions in this bill, that scenario could be played out.

We urge you to amend the pending legislation to make it conform to the basic tenets of the Stockman-Senate agreement on navigation cost sharing and to end the threat of double-taxation of shallow-draft waterway shippers and carriers by exempting — in no uncertain terms — barge transportation from the proposed ad valorem tax.

STATEMENT BY JOSEPH FARRELL, PRESIDENT, AMERICAN WATERWAY OPERATORS, INC., ARLINGTON, VA

Mr. **Farrell.** Mr. Chairman, I am Joe Farrell, president of the American Waterways Operators, which is the national trade association for the barge and towing industry, inland and coastal.

Let me summarize briefly the four main concerns we have which are contained in our formal testimony submitted for the record:

First, that the vessels paying into the Inland Waterway Trust Fund, as a matter of avoiding double-taxation, not be required to pay additional taxes for port O&M and port construction projects;

Second, that the shallow draft domestic fleet has not asked for nor does it need port-deepening projects, and therefore should not be required to pay for them, since they are not beneficiaries;

Third, that the Jones Act domestic fleet be confirmed as not required to pay the port O&M fee, or collect it;

And finally, to eliminate section 815, which I must say was somewhat startling to me when I saw it, since it is not contained in the Senate-OMB compromise and is yet another vessel user tax.

Having said that, Mr. Chairman, let me raise with you, if I may, a larger issue which is related, and address you, if I may, more as Members of the U.S. Senate rather than as simply members of the Finance Committee.

Anybody that knows anything about our industry knows the vital role it plays in U.S. export trade. Half the grain that goes for export, we haul. Anybody that knows anything about our industry knows the great benefits derived from it by the U.S. consumer, through our keen competition with the railroads. And anybody that knows anything about our industry knows that it is in the fourth year of a deep depression—not recession, but depression. Twenty percent of all the barge companies that were in business on January 1, 1984, are going to be bankrupt at the end of this year.

And yet, we find the Federal Government poised to enact legislation which is going to double the tax on the inland carriers and inaugurate a new tax on the coastal trades, on the port users.

And as one who served here for 8 years in a staff capacity, as one who has the most profound respect for this institution, I have to ask the question: How did we get here? How did this happen?

It is arguably true that this legislation that we are talking about today, the financial aspects of the legislation we are talking about today, is undergirded more by political considerations and a deficit-reduction exercise that it is about national sound, comprehensive transportation policy.

One asks the question again: How did that happen?

I offer one suggestion as a possible reason if not a major reason. If you look at the legislative and executive branches of Government, how they are organized—you can see the possibility of institutional barriers to this sound, comprehensive national transportation policy. In the Congress, you have a subcommittee on aviation, a subcommittee on surface transportation, a subcommittee on water resources. When a full committee of Congress engages transportation legislation or conducts a hearing, what happens is, they look at a piece of legislation that will impact part of a mode—or perhaps even an entire mode, but nonetheless a single mode. Rarely, if ever, are these considerations encompassing the entire transportation network of the United States. And I submit that there are parallel examples in the executive branch of Government.

I think this is a serious problem. And to the extent that I am right, may I commend it to you, Senators, as one that you will give some appropriate consideration to. Thank you.

The **Chairman**. Thank you.

Mr. Fink.

[Mr. Farrell's written testimony follows:]

Statement of Joseph Farrell, President, The American Waterways Operators, Inc.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM JOE FARRELL, PRESIDENT OF THE AMERICAN WATERWAYS OPERATORS, INC. (AWO). AWO IS THE NATIONAL TRADE ASSOCIATION REPRESENTING THE INLAND AND COASTAL BARGE AND TOWING INDUSTRY AND SMALL- TO MEDIUM-SIZED SHIPYARDS AND SHIP REPAIR FACILITIES. OUR CARRIER MEMBERS RANGE IN SIZE FROM COMPANIES OPERATING ONE OR TWO VESSELS TO THOSE WITH VESSELS NUMBERING IN THE HUNDREDS.

WE APPRECIATE THIS OPPORTUNITY TO COMMENT ON THE USER TAX PROVISIONS OF S. 1567, THE WATER RESOURCES DEVELOPMENT ACT. AS REPORTED BY THE ENVIRONMENT AND PUBLIC WORKS COMMITTEE, THESE PROVISIONS HAVE INCORPORATED THE PRINCIPLES OF THE JUNE 21 COST SHARING AGREEMENT BETWEEN FORMER OMB DIRECTOR DAVID A. STOCKMAN AND KEY SENATORS.

UNDER SECTION 801 OF S. 1567, BEGINNING JANUARY 1, 1988, THE INLAND WATERWAYS FUEL TAX WOULD INCREASE TO 11 CENTS PER GALLON OF FUEL CONSUMED FOR PROPULSION, AND INCREASE BY 1 CENT PER GALLON PER YEAR UNTIL REACHING A TOTAL OF 20 CENTS PER GALLON (UNDER P.L. 95-502, THE CURRENT USER TAX AUTOMATICALLY INCREASES TO 10 CENTS PER GALLON ON OCT. 1, 1985). IN EXCHANGE FOR THIS USER TAX ESCALATION, SIX INLAND LOCK PROJECTS WOULD BE AUTHORIZED, WITH THE INLAND WATERWAYS TRUST FUND RESPONSIBLE FOR 50 PERCENT OF THE CONSTRUCTION COSTS OF THESE PROJECTS.

AS THIS COMMITTEE IS WELL AWARE, THE DOMESTIC WATERWAYS INDUSTRY CONTINUES TO SUFFER SEVERE ECONOMIC HARDSHIP. THERE IS NO LIGHT AT THE END OF THIS TUNNEL; TALES OF PAIN AND SUFFERING BOTH OF A PROFESSIONAL AND PERSONAL NATURE ABOUND. WE HAVE, FOR SEVERAL YEARS, URGED CONGRESS AND THE ADMINISTRATION TO FOREGO ANY IMPOSITION OF ADDITIONAL USER TAXES PENDING ECONOMIC RECOVERY OR "REVENUE ADEQUACY" FOR OUR INDUSTRY. IN THE CONTEXT OF THE SENATE/OMB AGREEMENT, IT NONETHELESS APPEARS THAT THE USER TAX WILL INCREASE. ALL OF US SINCERELY HOPE THAT, BY JANUARY 1988, THE

INDUSTRY WILL BEGIN TO SHOW SIGNS OF RECOVERY AS THE TAX INCREASE GOES INTO EFFECT. BUT, I AM NOT OPTIMISTIC ABOUT THAT. OUR MEMBERS THINK A RECOVERY WILL TAKE LONGER.

WHILE, FROM OUR MEMBERS' PERSPECTIVE, THE AGREEMENT IS IMPERFECT AND UNFORTUNATELY TIMED, I WOULD LIKE TO EMPHASIZE THE POSITIVE ASPECTS:

(1) UNDER THE TERMS SET FORTH IN THE JUNE 21 SENATE COLLOQUY, THE ADMINISTRATION, REPRESENTED BY DAVID STOCKMAN, AGREED THAT THE ISSUE OF INLAND WATERWAY USER TAX INCREASES WOULD NOT BE REOPENED IN THE YEARS AHEAD. SENATORS DOLE, STAFFORD, ABDNOR, HATFIELD, AND DOMENICI GAVE SIMILAR ASSURANCES;

(2) INLAND WATERWAY OPERATION AND MAINTENANCE COSTS WILL NOT BE FINANCED FROM THE INLAND WATERWAYS TRUST FUND;

(3) THE INLAND WATERWAYS TRUST FUND WOULD FINALLY BE UTILIZED TO ASSIST IN THE FINANCING OF PROJECTS WHICH, ONCE THE INDUSTRY HAS REGAINED ITS HEALTH, WILL BE CRUCIAL IN THE COST EFFECTIVE AND EFFICIENT TRANSPORT OF COMMODITIES TO DOMESTIC AND EXPORT MARKETS.

HOWEVER, IN ORDER TO ASSURE THAT INLAND WATERWAY OPERATORS ARE NOT SUBJECT TO DOUBLE TAXATION, IT IS IMPERATIVE THAT TITLE VIII BE AMENDED TO EXEMPT FROM PORT OPERATION AND MAINTENANCE FEES CARGO TRANSPORTED ON VESSELS REQUIRED TO PAY THE INLAND WATERWAYS FUEL TAX, REGARDLESS OF CHANNEL DEPTH. NOR SHOULD THIS CARGO BE TAXED FOR TRANSPORT TO, FROM OR THROUGH SHALLOW-DRAFT PORTS.

VESSELS SUBJECT TO PAYMENT OF THE INLAND WATERWAYS FUEL TAX SHOULD ALSO BE EXEMPTED IN TITLE VI FROM IMPOSITION OF USER FEES FOR PORT AND HARBOR CONSTRUCTION, REGARDLESS OF CHANNEL DEPTH.

THE ENVIRONMENT AND PUBLIC WORKS COMMITTEE, AT AWO'S REQUEST, ELIMINATED A PROVISION IN THE AGREEMENT TO WAIVE PAYMENT OF THE PROPOSED TAX INCREASE FOR "FINANCIALLY DISTRESSED" COMPANIES, DEFINED AS THOSE OPERATORS IN CHAPTER 11 BANKRUPTCY. THE ENTIRE INDUSTRY CAN QUITE ACCURATELY BE CHARACTERIZED AS "FINANCIALLY DISTRESSED"...TO EXEMPT ONLY THOSE COMPANIES IN CHAPTER 11 REORGANIZATION WOULD PLACE ALL OTHER CARRIERS AT A COMPETITIVE DISADVANTAGE. AWO FULLY SUPPORTS THE ACTION OF THE ENVIRONMENT AND PUBLIC WORKS COMMITTEE IN DELETING THIS PROVISION AND RESPECTFULLY URGES THIS COMMITTEE TO CONCUR.

SECTION 813 WOULD IMPOSE A FEE ON CARGO VALUE CARRIED IN THE COASTWISE AND OCEANGOING TRADE TO ASSIST IN THE FINANCING OF PORT OPERATION AND MAINTENANCE (O&M) COSTS, AS PROVIDED IN THE JUNE 21 OMB/SENATE AGREEMENT. AWO HAS, IN THE PAST, OPPOSED THE ESTABLISHMENT OF PORT O&M FEES; HOWEVER, WE UNDERSTAND THAT THERE IS GENERAL ACCEPTANCE OF THESE FEES BY THE PORT COMMUNITY IN EXCHANGE FOR PROJECT AUTHORIZATIONS. THEREFORE, WE WILL ADDRESS OUR COMMENTS ON THE IMPLEMENTATION OF PORT USER FEES -- FOR BOTH O&M AND CONSTRUCTION -- AS IT AFFECTS DOMESTIC CARRIERS.

AWO COASTAL OPERATORS TRANSPORT CARGO ON THE EAST, WEST AND GULF COASTS. THESE COMPANIES UTILIZE SHALLOW-DRAFT VESSELS TRANSPORTING SUCH COMMODITIES AS COAL, CHEMICALS AND PETROLEUM PRODUCTS. COASTWISE BARGES DRAW MORE WATER THAN THOSE VESSELS OPERATED ON THE INLAND WATERWAYS WHERE CHANNEL DEPTH IS RESTRICTED. THESE BARGES ARE OPERATED SAFELY AND EFFICIENTLY USING EXISTING CHANNEL DEPTHS, AND SHOULD BE EXPLICITLY EXEMPTED FROM USER FEE REQUIREMENTS FOR GENERAL CARGO AND DEEP-DRAFT

PORT CONSTRUCTION. AWO IS QUITE CONCERNED WITH THE LATITUDE GIVEN TO THE PORTS IN SECTION 606 WITH RESPECT TO IMPOSITION OF USER FEES ON COMMERCIAL VESSELS FOR RECOVERY OF NON-FEDERAL CONSTRUCTION AND INCREMENTAL OPERATION AND MAINTENANCE COSTS. AS I STATED EARLIER, THE COASTWISE AND OCEANGOING TUG AND BARGE INDUSTRY DOES NOT REQUIRE, NOR DO WE SEEK, DEEPER CHANNELS. WE HAVE CONSISTENTLY SOUGHT TO AMEND THIS SECTION TO RESTRICT THE IMPOSITION OF DEEP-DRAFT USER FEES TO THOSE VESSELS WHICH REQUIRE A CHANNEL DEEPER THAN 45 FEET. THIS IS A TRUE "MARKETPLACE" TEST, TO HELP INSURE THAT ONLY COST-EFFECTIVE DEEP-DRAFT PORTS ARE CONSTRUCTED.

AWO ALSO URGES THE COMMITTEE TO IMPOSE ON THE PORTS A SIMILAR LIMITATION IN ESTABLISHING A SYSTEM OF USER FEES FOR GENERAL CARGO PORT CONSTRUCTION. FOR EXAMPLE, ONE AWO PETROLEUM-HAULING MEMBER COMPANY CURRENTLY UTILIZES A GULF COAST PORT, OPERATING TANK BARGES WITH A DRAFT OF 32 FEET. THIS PORT HAS A DEPTH OF 35 FEET, AND IS EXPANDING TO A DEPTH OF 44 FEET TO ACCOMMODATE LARGER VESSELS IN THE PHOSPHATE TRADE. WE SEE NO JUSTIFICATION FOR THE BARGE CARRIERS TO SHARE IN FINANCING THE DEEPENING OF THIS PORT: CLEARLY, WE ARE NOT BENEFICIARIES OF THIS OR SIMILAR PROJECTS.

PROPONENTS OF SECTION 606, AS CURRENTLY DRAFTED, CONTEND THAT THE TUG AND BARGE INDUSTRY ARE INDIRECT BENEFICIARIES OF PORT DEEPENING PROJECTS. THIS IS A FALLACY. IN FACT, WE STAND TO LOSE BUSINESS TO LARGER VESSELS WHICH WILL BE ABLE TO CALL AT THE PORTS WE PRESENTLY SERVE. NOR WILL, AS SOME CLAIM, THE NUMBER OF TUG ASSISTS INCREASE...FEWER TUGS WILL BE IN DEMAND, AGAIN, BECAUSE A LESSER NUMBER OF LARGER SHIPS WILL TAKE THE PLACE OF EXISTING VESSELS WHICH CURRENTLY REQUIRE THE ASSISTANCE OF TUGBOATS. WE WILL IN ESSENCE BE PAYING A USER TAX TO ENCOURAGE OUR OWN DEMISE!

TO PROVIDE GREATER PROTECTION FOR VESSEL OPERATORS, SECTION 606

SHOULD BE AMENDED TO REQUIRE A NOTICE IN THE FEDERAL REGISTER OF THE PUBLICATION OF A PROPOSED USER FEE SCHEDULE, FOLLOWED BY A PUBLIC HEARING ON THE PROPOSAL. ADDITIONALLY, IMPOSITION AND COLLECTION OF LOCAL USER FEES SHOULD NOT BE PERMITTED UNTIL THE PROJECT FOR WHICH THE FEE IS ASSESSED IS COMMERCIALLY USABLE.

IN ADDRESSING PORT O&M FEES, IT IS MY UNDERSTANDING THAT THE AD VALOREM FEE IS TO BE CHARGED ON CARGO VALUE AND PAYABLE BY THE SHIPPER, NOT BY THE CARRIER. THIS IS FURTHER CLARIFIED IN SENATE REPORT NO. 99-126, PAGE 9:

> "...THE BILL SETS THIS CARGO TAX ON THE VALUE OF THE COMMERCIAL CARGO LOADED OR UNLOADED. THE TAX IN TITLE 8 IS NOT ON THE HARBOR, NOR IS IT ON THE VESSEL'S OPERATOR OR OWNER. THE TAX IS SET ON THE VALUE OF THE CARGO, AND IS TO BE PAID BY THE OWNER OF THE CARGO, OR HIS AGENT..."

WE RECOMMEND, WHATEVER O&M USER TAX MECHANISM IS ULTIMATELY RECOMMENDED BY THIS COMMITTEE, THAT THE LEGISLATIVE LANGUAGE CLEARLY MANDATE THAT IT IS THE SHIPPER WHO IS RESPONSIBLE FOR PAYMENT. IN MOST CASES, TUG AND BARGE OPERATORS HAVE NO KNOWLEDGE OF THE VALUE OF THE CARGO THEY ARE CARRYING. NOR IS THERE DOCUMENTATION ACCOMPANYING THE CARGO WHICH LISTS CARGO VALUE, WHICH, I MIGHT ADD, VARIES SIGNIFICANTLY.

MR. CHAIRMAN, REPRESENTATIVES OF OUR NATION'S PORTS ARE CONCERNED WITH POTENTIAL DIVERSION OF CARGO TO OTHER PORTS. WE, TOO, IN THE CARRIER INDUSTRY SHARE THAT CONCERN, AS WELL AS DIVERSION TO PIPELINE, RAIL AND/OR TRUCK. IN ORDER TO MINIMIZE THE POTENTIALLY DETRIMENTAL EFFECTS THIS LEGISLATION MAY HAVE ON AWO COASTAL OPERATORS, WE RECOMMEND THE FOLLOWING REVISIONS TO TITLE VIII:

(1) VESSEL OWNERS AND OPERATORS SHOULD HAVE NO INVOLVEMENT IN OR LEGAL LIABILITY FOR THE IMPOSITION, COLLECTION, ADMINISTRATION OR DISBURSEMENT OF THE PORT OPERATION AND MAINTENANCE FEE. ANY ADMINISTRATIVE MECHANISM WHICH PLACES THE WATER CARRIER IN THE POSITION OF SERVING AS THE GOVERNMENT'S AGENT IN THE IMPOSITION OR COLLECTION PROCESS WILL BE TANTAMOUNT TO IMPOSING THE FEE ON THE CARRIER, GIVEN THE NATURE OF THE CARRIER/SHIPPER RELATIONSHIP AND THE OVERTONNAGED MARKET IN WHICH WE OPERATE;

(2) CARGO SUBJECT TO THE PORT OPERATION AND MAINTENANCE FEE SHOULD BE CHARGED ONE TIME ONLY. DOMESTIC CARRIERS FREQUENTLY MOVE THROUGH SEVERAL PORTS WITH THE SAME CARGO BEFORE REACHING THEIR FINAL WATERBORNE DESTINATION (IN THE SAME SPIRIT, AWO SUPPORTS SECTION 813(c) WHICH EXEMPTS FROM THE FEE CARGO UNLOADED FROM A VESSEL AT THE SAME CHANNEL OR HARBORS OF LOADING);

(3) CARGO VALUE SHOULD NOT INCLUDE THE COST OF DOMESTIC WATERBORNE TRANSPORTATION; AND

(4) DELAY OF THE IMPLEMENTATION OF THE PORT OPERATION AND MAINTENANCE PROVISIONS OF S. 1567 TO ALLOW FOR THE CONSIDERABLE ADMINISTRATIVE DETAILS TO BE WORKED OUT.

WE ARE PUZZLED BY THE ESTABLISHMENT, IN SECTION 815, OF A VESSEL USE TAX OF 5 CENTS PER THOUSAND DEADWEIGHT TONS. THE SENATE/OMB AGREEMENT DOES NOT CALL FOR SUCH A TAX, WHICH WE SEE AS AN UNWARRANTED AND, IN THIS ECONOMY, STILL ANOTHER COST OF BUSINESS THE CARRIER MUST ABSORB. ADDITIONALLY, WE CAN READILY FORESEE FREQUENT ESCALATION OF THIS TAX AS A REVENUE ENHANCEMENT MEASURE. WE RESPECTFULLY ASK THE COMMITTEE TO DELETE SECTION 815.

AWO COMMENDS THIS COMMITTEE FOR ITS COMMITMENT TO THE WATER CARRIER

INDUSTRY AND THE ROLE IT HAS CONTINUED TO PLAY IN UNDERTAKING A RATIONAL EXAMINATION OF THE USER TAX PHENOMENA, WHICH HAS BECOME A WAY FOR SOME TO CONDONE NEW TAXES WITHOUT EVER HAVING TO UTTER THAT DREADED WORD. I LOOK BACK, NOT SO LONG AGO, ON THE ADMINISTRATION'S PROPOSAL TO RECOVER 70-100 PERCENT OF ALL PORT O&M AND CONSTRUCTION COSTS AND VIRTUALLY 100 PERCENT OF ALL INLAND WATERWAY EXPENDITURES AND CAN ACKNOWLEDGE THAT WHAT WE ARE LOOKING AT TODAY IS A CLEAR IMPROVEMENT. FOR TOO LONG, WATER RESOURCES DEVELOPMENT HAS BEEN HELD HOSTAGE TO UNREASONABLE COST-SHARING REQUIREMENTS. TODAY, IT APPEARS THAT WE WILL SEE A WATER RESOURCES DEVELOPMENT BILL ENACTED IN THIS CONGRESS.

IT IS NOTEWORTHY, IN MY JUDGEMENT, TO MENTION THAT THE COMPROMISE WAS FASHIONED IN THE SPIRIT OF A COHERENT, COMPREHENSIVE WATER RESOURCES POLICY. WE HAVE SEEN, FOR TOO LONG, THE FRAGMENTATION OF TRANSPORTATION POLICY BOTH INTER- AND INTRA-MODAL.

IN ADDITION TO VARIOUS FEDERAL DEPARTMENTS AND AGENCIES WHICH OVERSEE THE WATER TRANSPORTATION INDUSTRY, THERE ARE NUMEROUS COMMITTEES AND SUBCOMMITTEES IN BOTH HOUSES OF CONGRESS WHICH HAVE JURISDICTION OVER THE DIFFERENT MODES OF TRANSPORTATION AND, IN PARTICULAR, WATER TRANSPORTATION. THESE COMMITTEES AND SUBCOMMITTEES MANY TIMES ACT IN VIRTUAL ISOLATION FROM ONE ANOTHER RATHER THAN IN CONCERT TO FASHION UNIFORM, COHERENT POLICIES. THIS COMMITTEE HAS CONSISTENTLY ADDRESSED THE AREA OF WATERWAY USER TAXES AND COST SHARING IN THE CONTEXT OF NATIONAL ECONOMIC AND TRANSPORTATION POLICY. WE GREATLY APPRECIATE THAT AND OFFER OUR ASSISTANCE TO YOU AND YOUR STAFF IN REFINING THE USER TAX PROVISIONS OF S. 1567. I'LL BE HAPPY TO ANSWER ANY QUESTIONS YOU OR YOUR COLLEAGUES MAY HAVE.

STATEMENT BY MARC J. FINK, PARTNER, BILLIG, SHER & JONES, ON BEHALF OF 28 OCEAN COMMON CARRIERS OF FREIGHT

Mr. Fink. Thank you, Mr. Chairman.

My name is Marc Fink, and I appear here today on behalf of 28 individual carriers. I am also authorized to state that the testimony which we are presenting to you today is supported by the Council of American Flag Ship Operators.

As you know, Mr. Chairman, we have previously appeared before you, as we have appeared before other committees, in general opposition to the concept of user fees. At this point in the legislative process we are not going to repeat that testimony, but I would like to leave with you today some specific concerns that we have with regard to the legislation that is now being considered; namely, S. 1567.

We have two principal concerns with that bill.

First, we very strongly object to the bill giving State and local governments authority in title VI to tax liner vessels for dredging projects which they do not use.

And second, we have some concerns with title VII, the ad valorem fee, and those really are in the nature of technical amendments.

Let me go directly to our first concern, and that is with respect to title VI.

There are two ways in which section 606 would authorize ports to tax liner vessels to recover costs associated with dredging projects which they do not use, a result which we consider to be wholly unfair and inequitable.

In this regard I should point out that liner vessels do not draw as much as 45 feet of water; rather, they draw generally between 30 and 40 feet. Clearly, they are not users of 50 to 55 foot depths. For this reason, we very strongly object to the fact that S. 1567 would not protect liner carriers from having to pay for dredging to depths greater than 45 feet. It is simply unfair and inequitable for us to have to pay for such dredging.

It was interesting for me to note that, in testimony presented earlier today by the National Coalition for Port Progress, they made mention of the fact that they do not like the current limitations that exist in section 606. If I understand that testimony correctly, what they would have the committee do is elimiante all restrictions in 606 so that the ports would have ultimate freedom to tax nonusers to recover the non-Federal share of the cost of dredging projects. That is, they would take away the reasonable-benefit test that now exists in section 606, a test that we find to be very vague and ambiguous, and instead of inserting in lieu of that something more specific, and something more fair and more equitable, they would eliminate that completely so that ports would have the freedom to tax liner vessels for port projects which they do not use nor would they ever use. We find that type of result to be wholly unfair and wholly inequitable.

Section 606 also strays from the user-fee concept by apparently authorizing ports to collect fees from the moment the first bucket of spoil is lifted from the bottom as part of a new construction project. As you know, Mr. Chairman, dredging projects frequently take many, many years before they can be used. However, under this bill, liner carriers would be asked to start paying user fees from the moment that project first begins.

Again, we submit, as a matter of fairness, a user fee simply should not be imposed until an improvement is completed in whole or in part. We have proposed legislative language which would accomplish this result, and we have set that forth at page 6 of our written statement.

Aside from notions of fairness and equity, to the extent that a port could not extract fees from nonusers it would be required to be that much more careful in designing and undertaking a project. Thus, the Congress should recognize that, because the over-broad user fee authority in section 606 encourages larger projects, the Federal project expenditures would go up as well.

The amendments we are offering would not only ensure that only economically-justifiable projects are pursued but would further the Congress' and administration's goal of disciplining Federal expenditures.

Now let me just quickly address title VIII.

With respect to title VIII, we have no objection to the establishment of an ad valorem fee on cargo interests to finance part of the cost of maintaining channel and harbor depths. We believe, however, that the wording of those sections of the statute do not clearly reflect the intent set forth in the report of the Environment and Public Works Committee, that cargo interests and not carriers be responsible for payment of this fee. And in that regard we were very pleased to hear the testimony of Senator Hatfield, in which I think he made it quite evident that in his view the importers and exporters would be responsible for the payment of this fee. Furthermore, we understand that the intent is to have collection of this fee undertaken directly by Customs from these importers and exporters.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

[Mr. Fink's written testimony follows:]

STATEMENT OF MARC J. FINK ON BEHALF OF 28 OCEAN COMMON CARRIERS OF FREIGHT

Summary of Statement of Marc J. Fink

1. This statement is presented on behalf of 28 ocean common carriers of freight ("liner carriers"). These carriers include both U.S. and foreign flag operators and they collectively serve all major U.S. ports.

2. Section 606 of S. 1567 would authorize state or local governments ("ports") to tax liner carriers for services which they do not use in two ways:

   (1) It would allow ports to tax liner vessels, which draw less than 45 feet of water, to finance dredging to depths greater than 45 feet; and

   (2) It would allow ports to tax vessels for projects before any portion of those projects are completed and ready for use.

   The carriers urge amendments to S. 1567 to eliminate these two potential abuses; as a matter of fairness we should not be taxed for services we do not use. In addition, such amendments would help keep down Federal spending by ensuring that projects are not overbuilt in anticipation of the ability to finance them from fees imposed on non-users.

3. The liner carriers have no objection to the thrust of the provisions of S. 1567 which would establish a Federal fee on cargo interests (of .04 percent of the value of the cargo) to finance port maintenance dredging. However, the statutory language must be amended to reflect the intent set forth at page 9 of the Environment and Public Works Committee's Report, that the fee is to be paid by cargo interests, not vessel operators, and also to make clear that the fee is collected by the Government directly from cargo interests.

Full Statement of Marc J. Fink

Mr. Chairman and Members of the Committee:

My name is Marc J. Fink, and I am a member of the law firm of Billig, Sher & Jones, P.C. I appear today on behalf of 28 ocean common carriers of freight (generally referred to as "liner" carriers) serving the foreign commerce of the United States. [1] Collectively, these carriers serve virtually all major U.S. ports. They fly both U.S. and foreign flags and are representative of the entire class of liner carriers serving the U.S. foreign commerce.

For several years we (the liner carriers) have consistently advised all concerned Congressional Committees of our opposition to so-called "user fees" on liner carriers to finance harbor and channel dredging. However, at this stage of the legislative process it appears that the broad outlines of port development/port user fee legislation have been shaped. So, rather than dwell on our general opposition to such fees, in today's testimony I will focus on our particular concerns with the legislation as it presently stands in the

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[1] A.P. Moller-Maersk Line; Achille Lauro; Atlanttrafik Express Service, Ltd.; Barber Blue Sea Line; Barber West Africa Line; CIA Venezolana de Navegacion; Columbus Line; Compania Trasatlantica Espanola, S.A.; Costa Line; d'Amico Societa di Navigazione per Azioni; Dart-M.L., Ltd.; Farrell Lines, Inc.; Flota Mercante Grancolombiana, S.A.; Hapag-Lloyd, AG; Italia Societa' Per Azioni di Navigazione; Jugolinija; Jugooceanija; Lykes Bros. Steamship Co.; Nedlloyd Lines; Nordana Line/Dannebrog Lines AS; Pace Line; Pharos Lines, S.A.; Prudential Lines, Inc.; Sea-Land Service, Inc.; The National Shipping Co. of Saudi Arabia; United Arab Shipping Co.; Waterman Steamship Corp.; and Zim Israel Navigation Co.

Senate -- S. 1567 as reported by the Committee on Environment and Public Works.

We have two concerns with S. 1567. First, we strongly object to the bill's giving state and local governments certain authority in Title VI to tax liner vessels for dredging projects which they do not use. Second, we urge that technical amendments be made to Title VIII so that the bill clearly reflects the intent set forth in the Environment and Public Works Committee's Report, that the proposed Federal *ad valorem* fee is to be paid by cargo interests, not vessel operators, and also to make clear that the fee is collected by the Secretary of the Treasury directly from cargo interests.

I. Liner Carriers Strongly Object To Ways In Which Section 606 Would Allow Ports To Tax Liner Carriers For Services Which They Do Not Use

Section 606 of S. 1567 would authorize state and local governments (hereinafter "ports") to impose fees on vessel operators to recover the non-Federal share of so-called "new construction" dredging projects -- projects to make channels and harbors deeper than they have ever been before. While these fees are generally referred to as "user fees," there are two ways in which Section 606 would authorize ports to specifically tax liner vessels to recover costs associated with dredging projects which they do not use, a wholly unfair result that is totally contrary to the notion of "user fees".

A. Ports Must Be Precluded From Taxing Liner Vessels For The Costs of Dredging To Depths Greater Than 45 Feet

Liner carrier vessels do not draw as much as 45 feet of water; they generally draw from 30-40 feet of water. Clearly, they are not "users" of 50 or 55 foot depths. Thus, we very strongly object to the fact that S. 1567 would not protect liner carriers from having to pay for dredging to depths greater than 45 feet. It is simply unfair and inequitable for us to have to pay for such dredging.

Moreover, our concern that ports will charge us for dredging services which we do not use is not hypothetical. Last year several ports testified before the Congress that they should be able to impose user fees on liner carriers to finance the local share of the cost of dredging to depths not needed by liner vessels. Specifically, the ports suggested to the Congress that the entire port community, and even importers and exporters located far from ports, would benefit from dredging projects to depths greater than 45 feet. Thus, the ports continued, if there is less than 100% Federal financing for these very deep draft projects, all members of the port community should be subject to taxation to support those projects. The particular "benefits" that were alleged to accrue to liner carriers from dredging to depths greater than 45 feet were employment and other increases in economic activity in the community and safety benefits.

We completely disagree that dredging to depths greater than 45 feet is required to meet any safety needs in ports. Coast Guard regulations already address safety considerations.

Furthermore, it is clear that the possibility that a deeper than 45 feet dredging project would generate wide economic benefits in a community is not an argument for a user fee on liner carriers. Instead, it is an argument for 100% governmental funding. If the economic effects of a project in a community are expected to be significant and general, the local government should pay for it, expecting to gain a financial return from the increased tax revenues generated by the additional activity. Thus, allegations of broad economic benefits appear to us to avoid, rather than answer, the question of whether liner carriers benefit from dredging to 45 foot plus depths.

In short, Mr. Chairman, our point is that the ability to identify truly specific benefits is what makes a "user fee" a "user fee". And, if specific benefits cannot be identified as accuring to a person from a project, it is unfair to tax that person for the project any more than the general public is taxed for the project. Sometimes the line between beneficiaries and non-beneficiaries, between direct beneficiaries and indirect beneficiaries, is hard to draw. However, Mr. Chairman, the line between dredging to depths greater than 45 feet (needed only by super colliers and large oil tankers) and the depth requirements of liner vessels is clear and easy to draw. Accordingly, if any user fees are to be imposed, the Congress should draw that line and not provide localities the license to conclude that vessels drawing 35 feet of water use depths greater than 45 feet, license which S. 1567 would improperly and unfairly provide.

While we recognize that Section 606(a) of S. 1567 provides that fees are to bear a "reasonable" relationship to benefits conferred, given the previous testimony of ports, this is clearly not adequate protection for liner carriers against the possibility that ports will seek to tax containerships for a significant portion of the costs of these deeper than 45 feet projects, projects which are very expensive. A "reasonableness" test is simply too vague and ambiguous. On the other hand, the 45-foot depth is generally accepted as a cut-off point between depths which serve the interests of all waterborne commerce (so-called "general cargo ports") and the deeper than 45 feet harbors (so-called "deep draft ports" or "superports") which are needed by only a handful of commodities. Vessels which do not require such deep draft dredging should not be subject to fees associated with those projects. This point, we believe, should be made clearly and explicitly in the statute; ports should not be given the opportunity to contend that it is "reasonable" for them to charge 35 foot draft vessels for 46, 50, and 55 foot deep channels.

Therefore, for reasons of fundamental fairness, and to be consistent with the notion of "user fees", Section 606(b) of S. 1567 should be amended so that ports are not provided authority to impose fees on vessels drawing 45 or less feet of water to finance projects to depths greater than 45 feet. There are several different ways to draft an amendment that would have this effect and we have discussed drafting with the Committee staff.

B. S. 1567 Would Improperly Allow Fees To Be Collected For The "Use" of Projects Which Are Not Completed and Not Available For Use

Another way in which Section 606 of S. 1567 strays from the "user fee" concept is by apparently authorizing ports to collect fees from the moment the first bucket of spoil is lifted from the bottom as part of a new construction project. Major dredging projects, even if on schedule, can take many years before they are completed in whole or in usable part. Thus, to the extent fees are imposed before a project is completed and available for use, they are not "user" fees. Our position is that, as a matter of fairness, a "user fee" simply should not be imposed until an improvement is completed, in whole or in part, so that vessels can use it. Thus, we urge the Committee to add a new paragraph to Section 606(b) to establish that local fees to recover the non-Federal share of new construction projects could not be imposed on vessels

> "except to recover the non-Federal share of projects whose construction is complete (including as a complete project any usable increment of a project)."

C. Bringing Section 606 of S. 1567 More Into Conformity With The Notion Of User Fees Would Further Deficit Reduction Efforts

In addition to promoting fairness, the Congress should also adopt the two amendments discussed above because they will further our national deficit reduction efforts. Mr. Chairman, to the extent that a locality could not consider the possibility of extracting fees from the non-users of a project in order to finance that project, that locality would have to be that much more careful in designing the project. Thus, the foregoing amendments will help ensure that only economically justifiable projects are sought and built. The result of such added discipline in project design would be to reduce Federal expenditures, as the Federal share as well as the non-Federal share of the project would be reduced. Thus, the Congress should recognize that, because the overbroad "user fee" authority in Section 606 encourages larger projects, the Federal project expenditures will go up as well.

Therefore, the amendments we are offering would further the Congress' and Administration's goal of disciplining Federal expenditures and we are hopeful that the Congress will not pass up this clear opportunity to make S. 1567 not only fairer, but more responsive to budgetary concerns. 2/

2/ One further technical concern with Section 606 of S. 1567 which we have brought to the attention of the Committee staff is the need for an amendment to ensure that, to the extent a port is ever found by a court to have collected fees in violation of the terms of this Section, it would have to refund the unlawfully collected fees. This amendment is needed because the fees under Section 606 are non-Federal fees. We are aware of instances (through other litigation involving motor carrier taxes) in which some states, through use of various tax procedure statutes or the sovereign immunity doctrine, refuse to refund tax payments even after the tax itself has been declared unconstitutional, limiting taxpayers to prospective relief. We cannot imagine that the Congress intends to sanction a port's retaining any fees which, after full judicial review, are found to have been unlawfully collected.

II. The Ad Valorem Fee Of Title VIII Is Acceptable, With Technical Clarifications

We have no objection to the general thrust of the proposal, set forth in sections 811-819 of S. 1567, to establish an ad valorem fee on cargo interests to finance part of the cost of maintaining channel and harbor depths. We believe, however, that the wording of those sections of the statute do not clearly reflect the intent (set forth in the Environment and Public Works Committee's Report) that cargo interests, not carriers, be responsible for payment of this fee. Thus, we have provided Committee staff with technical suggestions which would make clear that the fee is to be paid by cargo interests and that collection of the fee should be made directly from the cargo interests by the Secretary of the Treasury or his delegate.

We also take this opportunity to note a number of reasons why we believe the Environment and Public Works Committee (and the House Public Works and Transportation Committee as well) properly called for the ad valorem fee to be paid by shippers, and why the fee should also be collected by the government directly from shippers, not carriers:

> (1) It is the shipper, not the carrier, who knows the value of the cargo. The carrier would be dependent on the shipper for this information.
>
> (2) It would be a new administrative and paperwork burden for carriers to maintain this information. This is particularly true in the case of liner carriers, whose modern containerships often carry the goods of thousands of shippers simultaneously.

(3) Shippers already have to file declarations with the U.S. government regarding imports and exports.

(4) Carriers, but not shippers, are subject to fees for new construction under Section 606.

(5) Collection from shippers, who are far more numerous than carriers, would mean that the burden of the ad valorem fee is dispersed more widely, with less impact on individual businesses.

(6) Moreover, there should be no illusions that carriers could pass on the cost of any user fees. International liner trades are highly overtonnaged and likely to become even more so in the next few years. Thus, there is significant downward pricing pressure at present in our industry.

Finally, we wish to make clear our position in case the Congress should shift from the present apparent consensus that the ad valorem fee be on shippers, not carriers. Such a shift would not only be an administrative nightmare and inequitable for the reasons set forth above, but it would also focus much of the financial burden of the fee system on liner carriers, which carry high value cargo. The burden would focus so heavily on us that we would urge the Congress not to pass a port bill at all -- i.e., pass S. 1567 minus the port provisions -- rather than pass one which includes a Federal fee on carriers based on the value of cargo.

That concludes my prepared statement and I thank the Committee for the opportunity to present it.

* * * *

Senator MATSUNAGA. Mr. Chairman, I can't stay for the questioning because I am already late for the next meeting. I ask unanimous consent, Mr. Chairman, that a letter addressed to me from the Pacific Basin Development Council be inserted in the record immediately following the statement of Mr. Yamasaki.

The CHAIRMAN. Without objection, so ordered.

Senator MATSUNAGA. And I ask unanimous consent that a statement from the Pineapple Growers Association of Hawaii be included in the record at the appropriate place, preferably following that statement.

The CHAIRMAN. Again, without objection. Thank you very much.

Mr. Sutton and Mr. Farrell, let me pose this question to you, because it is going to be raised: Why shouldn't you pay both fees? Why shouldn't you pay the barge fuel fee and the user fee, because one is designed to improve the waterways and the other improves harbors and ports, when you use them both? Aren't you getting out from under part of the obligation if you are only subject to the barge fee?

Mr. SUTTON. Well, when we transport cargo, it quite often goes, and very often, midstream to the ship. Baton Rouge is a good example where we bring down coal. The barges go alongside the ship, and the coal is transferred in there.

The CHAIRMAN. You are never in the port, is that what you are saying?

Mr. SUTTON. That is right. But when we are, we go typically to connect to the ship. And of course we don't use the deepdraft facilities. If the cargo is taxed in relation to coming off around the ship, then that cargo has been taxed. It is the same cargo, just moving through the port.

The CHAIRMAN. Mr. Farrell.

Mr. FARRELL. I would only add that we contend that the coastal Jones Act fleet not be required to pay either construction or O&M. And the O&M is quite clear, I think, in both the Senate and the House. So, if they are not to pay, why should the inland carriers pay?

The CHAIRMAN. Good answer.

Senator Hatfield talked about the possibility of backloading the barge fuel fees. Mr. Farrell, what is your opinion?

Mr. FARRELL. This is better than the proposal as it exists now, I think, Mr. Chairman.

The CHAIRMAN. Would you be willing to support it even though at the end of 10 years it came out the same?

Mr. FARRELL. Do you mean 10 cents at the 10th year?

The CHAIRMAN. Yes.

Mr. FARRELL. Today I would.

The CHAIRMAN. Today you would?

Mr. FARRELL. Well, I can't see 10 years ahead, Senator. But from what I know now and what I have learned in this industry, that striked me as a better proposal. I would be interested in what my friend Mr. Sutton has to say about that.

The CHAIRMAN. Mr. Sutton.

Mr. SUTTON. Yes, I would. And the reason it should be backloaded is because our business is in tough shape, and it is in tough shape because we don't have enough cargo to move primarily. And we don't have enough cargo to move because our cargo isn't competitive in the world market, for one reason or another.

It won't come out of the barge lines 'hide this time; there isn't any more hide left. So, any tax is going to be added on to the cost of moving the goods.

The CHAIRMAN. Gentlemen, I have no more questions. Good job. I appreciate it. Thank you.

Mr. FARRELL. Thank you, Mr. Chairman.

[Whereupon, at 3:30 p.m., the hearing was concluded.]

[By direction of the chairman the following communications were made a part of the hearing record:]

STATEMENT OF STEPHEN A. ALTERMAN, EXECUTIVE VICE PRESIDENT AND COUNSEL, AIR FREIGHT ASSOCIATION

STATEMENT OF POSITION

The Air Freight Association is a nationwide trade organization consisting of a major segment of the United States air cargo industry, including both airlines and air freight forwarders. A current Association membership roster is attached hereto. As substantial users of the United States Customs Service, the members of our industry are concerned that the proposed imposition of Customs Service user fees is unwarranted as a general proposition and will subject the industry to unwarranted and unfair double taxation.

THE USER FEE CONCEPT

President Reagan, in his fiscal year 1983 Budget Message, stated that: "In cases where the general public is the recipient of the benefits of a Federal program, rather than a clearly indentified group, users fees will not be imposed." This position was seconded by the General Accounting Office in early 1985 when it stated with specific reference to Customs user fees that: "GAO does not believe there is merit is assessing user fees for the formalities that are not voluntary because these formalities protect the nation as a whole." Comptroller General, *Compendium of GAO's Views of the Costs Saving Proposals of the Grace Commission*, GAO/OGC 85-1, February 19, 1985. In short, while our Association supports attempts to reduce the mounting Federal deficit, we agree with the President and GAO that this reduction should not be accomplished by subjecting a specifically targeted segment of the population to double taxation. All Americans already pay for government services such as Customs through the general income tax, and the airlines and their customers should not be made to pay twice for these services. Yet, this double taxation is precisely what the proposed user fees would accomplish.

If anyone ever proposed to charge taxpayers a fee in addition to the income tax for the processing of returns, the public outcry would be loud and immediate, and the chances of Congressional passage of any such legislation would be virtually non-existent. Yet, the imposition of Customs Service user fees would result in the same unfair situation. Like the Internal Revenue Service, the Customs Service benefits the population as a whole by monitoring imports to insure that contraband goods are not brought illegally into the country; by collecting duties on imported goods; and by protecting American labor from destructive competition nad discrimination. Indeed, it is estimated that the Customs Service generates over $20 for each dollar spent. To impose a user fee on top of this structure is singularly inappropriate.

SPECIFIC USER FEE CONCERNS

Moving beyond the general concept of user fee legislation, the members of the Air Freight Association would like to take this opportunity to discuss the propriety of certain specific user fee proposals. First, it should be noted that the air freight industry, as opposed to the passenger transportation business, has specific concerns not usually addressed in analyses of the air transportation industry as a whole. For too long, proposals nominally designed to affect the airline business generically have in fact been passenger proposals -- with the freight industry thrown in for good measure. The result of this institutional attitude has been generally to ignore the specific concerns of the freight industry; to key only on the more visible passenger segment of the market; and thereby to create an atmosphere whereby the air cargo business pays a disproportionate share of the business of regulating the airlines. Congress should not permit this attitude to continue.

With respect to user fees, one specific proposal has been to charge a fee based on the value of the shipment being imported. Even if user fees were generally appropriate, basing a fee on the value of the shipment makes no sense whatever and again subjects the air cargo industry to an unfair burden. If a user fee is designed to reimburse the government for services performed, it should be obvious that it takes the Customs Service the same amount of time to inspect a valuable 2'x 2' package as it does to inspect the same size package filled with inexpensive imports. The value of the shipment if irrelevant, and basing a "user fee" on value is blatantly unfair and discriminatory and will inevitably force the cargo industry in effect to subsidize the Customs Service. Therefore any legislation which proposes to impose a "value test" must be immediately discarded.

Moreover, it is the position of our Association that, if user fees are enacted, the administration of the collection of these fees should be as simple as possible and should not require a self-contained bureaucracy which would reduce the net benefit of such fees. It makes little sense to enact a scheme whose revenue - generation is substantially reduced by administrative costs. Therefore, if any fees are to be imposed, they should be simple. Indeed, although opposed to the underlying concept of user fees, the Association would not actively oppose enactment of legislation substantially similar to that favorably reported by the Committee on Ways and Means of the House of Representatives as H.R. 3034. This legislation would replace all customs fees with a $5 per passenger levy to be collected by the airlines ($1 for transborder and certain Caribbean Island flights) and transmitted to the U.S. Treasury on a quarterly basis.

CONCLUSION

While the Air Freight Association understands and desires to cooperate in attempts to reduce the current federal deficit, we do not feel that a Customs Service user fee is an appropriate or fair means of accomplishing this objective. Unlike most other Government agencies, the Customs Service already more than pays for itself, and the idea of the airlines industry alone paying for a service required by the general public welfare is wholly unfair and constitutes little more than double taxation. At the same time, the Association will not oppose legislation which mirrors H.R. 3034 already favorably reported by the House Ways and Means Committee.

Thank you for the opportunity of presenting the position of the air freight industry. If this Committee has any questions or needs further data, we look forward to working with you.

Air Freight Association

1710 Rhode Island Avenue, N.W., 2nd Floor
Washington, DC 20036 (202) 293-1030

MEMBERSHIP LIST - JUNE 1985

Air Express International	Darien, Connecticut
Airborne Express	Seattle, Washington
Amerford International	Jamaica, New York
American Airlines	Dallas, Texas
Arrow Airways	Miami, Florida
Associated Air Freight	New Hyde Park, New York
Aviation Group	Raleigh, North Carolina
Burlington Northern Air Freight	Irvine, California
Dynamic Air Freight	Dallas, Texas
Emery Worldwide	Wilton, Connecticut
Evergreen International Airlines	McMinnville, Oregon
Flying Tiger Line	Los Angeles, California
Imperial Air Freight	Newark, New Jersey
InterState Airlines	Ypsilanti, Michigan
Northern Air Cargo	Anchorage, Alaska
Pilot Air Freight	Lima, Pennsylvania
Profit Freight Systems	Atlanta, Georgia
Purolator Courier	New Hyde Park, New York
Ryan Aviation	Wichita, Kansas
SMB Stage Lines	Dallas, Texas
Southern Air Transport	Miami, Florida
Spirit of America Airlines	Burlingame, California
Summit Airlines	Philadelphia, Pennsylvania
Surfair	Atlanta, Georgia
Transamerica Airlines	Oakland, California
WTC Air Freight	Torrance, California

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON FINANCE

STATEMENT OF ATLANTIC CONTAINER LINE, COMPAGNIE GENERALE MARITIME AND INTERCONTINENTAL TRANSPORT (ICT) B.V. REGARDING S. 1567, THE "WATER RESOURCES DEVELOPMENT ACT OF 1985"

This statement is submitted by the undersigned on behalf of Atlantic Container Line, Compagnie Generale Maritime and Intercontinental Transport (ICT) B.V. (the "European liner operators") to communicate to the Committee on Finance their common views concerning S. 1567, which was the subject of Committee hearings on September 10, 1985. We request that this statement be included in the legislative record concerning the bill.

The European liner operators serve various international trade routes which include calls at U.S. general cargo ports. Each carrier utilizes modern liner vessels, drawing approximately 35 feet of water, specifically designed for the carriage of containerized cargo or a combination of roll-on/roll-off and containerized cargo. The carriers are particularly concerned with the "user fee" aspects of S. 1567.

Dredging projects at U.S. ports traditionally have been funded by the Federal government, but it is recognized that there are a number of pending legislative proposals, including S. 1567, which would alter the status quo by (1) requiring that a portion of port dredging and maintenance costs are to be paid for by localities, and (2) authorizing those localities to recover such expenditures via the imposition of user fees. S. 1567 would also impose a national ad valorem fee on import and export cargo in order to fund a portion of the Federal government's continued (albeit reduced) financial obligation for port dredging and maintenance. The European liner operators urge that if the traditional system of one hundred percent Federal funding is to be changed in the manner proposed in S. 1567 certain clarifications and protections need to be incorporated into the legislation so as to insure that both the local user fees imposed as a result of non-Federal cost sharing and Federal ad valorem fees are levied fairly and equitably.

The European liner operators believe that the user fee provisions of S. 1567 as presently drafted contain the seeds for unfair treatment of liner operators. The bill would impose very large financial burdens on local ports, and would then give those ports wide discretion to devise systems of user fees to meet such burdens. The only check on the exercise of that discretion is the broad language contained in section 606(a) of the bill, which merely requires user fees to "reflect to a reasonable degree the benefits provided by the project to a particular class or type of vessels." This broad language is not enough. Allowing each locality, even with a required hearing process, to fashion its own criteria for the imposition of user fees invites the real possibility that fees related to deep-draft dredging and maintenance (those as to which the non-Federal share would be greatest) will be assessed inequitably on liner operators who have no need for deep-draft channels.

For example, it would be grossly unfair for a local port to establish a formula which imposed user fees on vessels drawing only 35 feet where such fees in any way relate to costs incurred for dredging to 45 foot depths required only by much larger vessels. Such unfairness would only be compounded if ports are also allowed the discretion to establish across-the-board user fees that can be levied on an ad valorem, as opposed to tonnage, basis since liner cargo is traditionally higher rated than the tanker, bulk and neo-bulk cargoes which require deeper channels in the first place.

In practice such a system of user fees would require liner operators to subsidize port construction and maintenance required only for tankers, coal carriers and other bulk carriers. Simply stated, even if these deep-draft operators cannot afford to pay their fair share of the costs attributable to the construction and maintenance of the channels they require, and even if for public policy reasons it is deemed to be in the national interest to somehow subsidize such construction and maintenance, it would be totally artificial and arbitrary for the burden of any such subsidy to be borne by liner operators. To assure that such potential inequities do not occur, section 606(a) of S. 1567 should be amended so as to clearly state (1) that a locality cannot charge an ocean carrier user fees that relate to the recovery of port construction or maintenance costs attributable to channel depth greater than that required by the carrier's vessels, and (2) that such fees may only be imposed on a tonnage, and not an ad valorem basis.

There is yet another factor aggravating the inequity of a system under which medium-draft liner operators would have to pay costs in any way relating to deep-draft dredging and maintenance. Unlike deep-draft operators, liner operators traditionally call at many ports on one voyage. As currently drafted S. 1567 would adversely affect such multiport liner carriers by requiring them to pay substantial user fees not just once, but at every U.S. port on their voyage itineraries. For example, the European liner operators on the average call at four to five U.S. ports on each voyage. This kind of multiple assessment would be unfair and shortsighted even if the user fees at each port were not excessive. But if the local user fees are excessive because they relate to the recovery of deep-draft costs and/or because they are assessed on an ad valorem basis, the inequity would be compounded by a factor of four or five, thus raising mere inequity to the level of scandal.

Not only would multiport carriers and their shippers be disadvantaged, but the viability of many U.S. ports would be affected as well. This would be so since multiport carriers would be forced to reduce the number of ports directly served and instead rely increasingly on overland transport to move cargo to and from areas that but for increased costs would have been served more conveniently through local ports.

As to the potential imposition of Federal ad valorem fees to cover portions of the Federal share of port dredging and maintenance, the European liner operators urge that the provisions of sections 811, et seq., of S. 1567 should be amended so as to clarify that the ad valorem fees imposed are clearly fees due from and to be paid by cargo interests and not ocean carriers. While this is the apparent intent of the bill it is nowhere explicitly stated, but it should be.

Finally, the European liner operators wish to state their support for the other broad principles underlying S. 1567. Port dredging is an ongoing need and it should be freed as much as possible from current time-consuming regulatory constraints. The "fast-tracking" provisions of the bill should accomplish exactly that.

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POSITION PAPER

S. 1567
WATER RESOURCES DEVELOPMENT ACT OF 1985

George J. Ryan
President
Lake Carriers' Association

Senate Committee on Finance

September 10, 1985
Washington, D.C.

Lake Carriers' Association represents 15 U.S.-flag Great Lakes fleets. The 15 member fleets have a combined total of 98 vessels with a per-trip capacity of 2,414,827 gross tons of bulk cargo. These vessels comprise more than 95 percent of the tonnage of U.S. Great Lakes vessels and approximately 33 percent of all U.S. self-propelled vessels of 1,000 gross registered tons or larger engaged in the domestic trade.

Lake Carriers' Association opposes any User Charge for operation and maintenance (O&M) dredging of Great Lakes ports and connecting waterways. The national and international impacts of Great Lakes shipping more than justify continued full federal responsibility for the cost of O&M dredging on the Lakes.

Lake Carriers' Association grants that the 0.04 percent ad valorem tax proposed in S. 1567 is the least debilitating of the various User Charge proposals considered in this and past Congresses. However, even this tax will have negative impacts on Great Lakes shipping and the industries it serves. In the case of iron ore, an ad valorem tax of 0.04 percent will increase the cost by about $0.02 a ton. That figure is not as insignificant as it seems. It must be remembered that the domestic steel industry has lost more than $6.5 billion since the recession began in 1982. Assuming a movement of 60 million tons during a navigation season, steel would see its iron ore costs rise by $1.2 million at a time when stringent cost-cutting and cost-control measures have been implemented in order to survive the life and death struggle with the recession and foreign steel.

The O&M User Charges contained in S. 1567 pose a serious threat to Great Lakes shipping and its customers. However, this threat pales when compared to the straight tonnage tax of $0.12 under consideration by the staff of the House Committee on Merchant Marine & Fisheries. If this proposal became law, the $1.2 million tax on iron ore would soar to $7.2 million. Coal moved on the Lakes would pay an addtional $4.5 million in taxes, a discouragement for further conversions of power plants. Limestone for steelmakers and farmers would bear the burden of $2.7 million in additional taxes under a straight tonnage tax of $0.12.

A straight tonnage tax of $0.12 is an intolerable burden on the Great Lakes shipping industry and will raise the price of every commodity moved on the Lakes. Lake Carriers' Association urges that this tonnage tax be removed from consideration. If O&M User Charges are to become the law of the land, the 0.04 percent ad valorem tax is definitely the lesser of two evils.

# # #

STATEMENT OF JOHN C. COUCH
PRESIDENT AND CHIEF OPERATING OFFICER
MATSON NAVIGATION COMPANY, INC.

BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

HEARING ON PORT AND INLAND WATERWAY USER FEES
S. 1567

September 10, 1985

Mr. Chairman and members of the Committee:

On behalf of Matson Navigation Company, Inc. ("Matson") I want to thank the Committee for the opportunity to submit this written statement for the record.

Matson is a common carrier by water operating containerships and combination container/trailerships between U.S. Pacific coast ports and ports of the State of Hawaii. Matson is interested in S. 1567 because of its potential adverse impact on the economy of the State of Hawaii as set forth in the testimony of Wayne J. Yamasaki Director of Transportation of the State of Hawaii. Matson is further concerned that any program requiring collection of user fees by carriers based on the value of cargoes would be administratively impractical.

Matson has been one of the principal carriers of general cargoes between the U.S. Pacific coast and Hawaii for more than 100 years. Its growth and prosperity is linked with that of the economy of Hawaii. Matson urges the Committee to give great weight to the testimony of Mr. Yamasaki that the proposed port user fees would unreasonably increase the cost of goods in Hawaii because of its dependence on ocean transportation for the 80% of its consumer goods which are imported. The proposed user fees will not have that adverse impact on the economy of the contiguous 48 states and the people of Hawaii will be unfairly and unduly burdened. Matson's interests as one of the principal ocean carriers of goods to and from Hawaii would be prejudiced by such a damper on the economic growth of the Hawaiian economy.

Any proposal to require common carriers to collect user fees from their shippers based on the value of cargoes would be unworkable. Even if the law requires shippers to file declarations of value with carriers, the procedures would necessarily be very burdensome. Carriers would either have to refuse the tender of cargo without accompanying declarations, which would greatly annoy shippers, or would have to retain custody of it until receiving proper declarations. In either case, a significant impediment would be placed on the flow of commerce.

Matson joins with the State of Hawaii in asking that Hawaii be exempted from the port and waterway user fees provisions of the bill.

Dated: September 18, 1985

Statement of the

National Association of Stevedores

Presented to the

Committee on Finance
United States Senate

on

S. 1567: The Water Resources Development Act of 1985

Submitted by

Thomas D. Wilcox
Executive Director and General Counsel

National Association of Stevedores
2011 Eye Street, NW
Suite 601
Washington, DC 20006

September 10, 1985

The National Association of Stevedores (NAS) is a membership trade organization representing the United States stevedore and marine terminal industry. NAS member companies employ tens of thousands of longshore labor to load and unload ships calling at this country's ports in both foreign and domestic commerce. NAS member companies do business on all of the nation's seacoasts, the states of Alaska and Hawaii, the Commonwealth of Puerto Rico, and various inland ports.

"User fees" - or more accurately, taxes - are of particular concern to the stevedore/marine terminal industry because they will have a direct impact upon United States commerce. Ninety-five percent of this nation's international commerce is waterborne. The ships which transport this commerce to and from U.S. ports must be loaded and unloaded by stevedore and marine terminal companies, and the labor they employ. Added costs will adversely affect the flow of commerce. For example, with U.S. exports, added cost will make them less competitive in the world market to the detriment of the American producer, the stevedore/marine terminal industry, and other industries which serve or depend upon waterborne commerce.

Since early in the nation's history, water resources and port and harbor development were the concern of the federal government. The federal government, the nation itself, paid for port and harbor development to "aid commerce and to meet national defense needs." Now, both Congress and the Administration are prepared to depart from historic precedent and tradition because of the huge budget deficit - and that is the *only* reason - and impose taxes upon this nation's waterborne commerce. Some of the adverse effects of such a tax have been recognized by the Congressional Budget Office in its report, "The Federal Budget for Public Works Infrastructure," July 1985, Chapter VI. The CBO recognized that port "user fees" - taxes - will cause a shift in traffic from smaller ports to larger ports, and have some effect on the overall level of shipping. The NAS believes that the impact of the "user fee" - tax on the commerce of the U.S. was not fully considered by the Committee on Environment and Public Works, and that the Finance Committee must now do so.

We shall confine our remarks to sections 812 and 813 of S. 1576. These sections create a Harbor Maintenance Trust Fund, and assess all waterborne commercial cargo an *ad valorem* tax of .04 percent for the use of any commercial channel or harbor within the United States by a commercial vessel. The NAS opposes the imposition of such a tax. First, it is an unwarranted and unjustified departure from well reasoned historic precedent. The nation's commerce serves the entire nation; the entire nation should continue to pay for its ports and harbors. Secondly, the "user fee" - tax - is unconstitutional as applied to U.S. exports. Article I, Section 9, Clause 5 of the Constitution provides:

> "No Tax or Duty shall be laid on Articles exported from any State."

The "user fee" - tax - which section 813 would impose on commercial cargoes for the use of a commercial channel or harbor is plainly a tax for the sole purpose of raising revenue, and is devoid of any regulatory purpose (Senate Report 99-126 at pages 9-10). As such, it is unconstitutional, Moon v. Freeman 379 F.2d 382 (9th Cir. 1967), and cases cited therein. The Constitutional prohibition of Article I, Section 9, Clause 5 is a limitation on Congress' authority to regulate commerce under the Commerce Clause, and a tax on exports for the purpose of generating revenue is invalid.

The Committee on Environment and Public Works estimates that the ad valorem tax of 4 cents per $100 value of cargo passing through harbors will raise $140 million. But will it? If the tax is somehow Constitutionally applied to American exports, how will these exports fare in world trade? American exports are now at a severe competitive disadvantage in the world's markets. This is reflected in the ever increasing trade deficit. By increasing the cost of exports, Congress will be contributing to the burdens on American exports which will, in turn, adversely affect the trade deficit. While it may appear to some that an additional 4 cents for every $100 of cargo value is insignificant, the tax can be very significant on high value cargoes such as earth moving equipment, computers, locomotives, chemicals, trucks, electronics, and the like. Indeed, even low value cargo such as wheat, grain, and coal may not be able to compete in the world market with any additional cost burden. Lost exports mean fewer jobs for NAS member companies and American exporters, and also mean less cargo upon which to impose the port and harbor "user fee" - tax. It appears that the Committee on Environment and Public Works did not consider this point. The Finance Committee must - and it must reject the tax.

Another point not considered by the Committee on Environment and Public Works, which is of great concern to NAS members and was recognized by Senator Mitchell (Senate Report 99-126 page 133), is the diversion of U.S. cargo to Canadian ports. The problem was also noted by Representatives Edgar and Borski in House Report 99-251, Part 1 on H.R. 6 of the House Committee on Public Works and Transportation.

For several years increasing amounts of U.S. origin and destination cargoes have been bypassing U.S. ports for ports in Canada. Motor carrier access to the U.S. Mid-West, Northwest and Northeast from Canadian ports is excellent. A highly efficient Canadian rail system with U.S. subsidiaries or interline connections reaches the whole northern tier of the U.S. The port of Montreal boasts that 50% of its cargoes comes or goes to the United States. The ports of Vancouver, B.C., Montreal, Quebec City, Halifax, and St. John are all modern efficient ports which compete with U.S. ports for U.S. origin and destination cargo.

None of that cargo will be subject to the .04 ad valorem "user fee" - tax. The amount is significant, so much so that the Maritime Administration (MarAd), U.S. Department of Transportation, monitors the cross border cargo. According to MarAd the data for the past two years shows:

U.S. ORIGIN OR DESTINATION OCEANBORNE CARGOES LOADED
OR DISCHARGED AT CANADIAN PORTS AND MOVED OVERLAND TO
OR FROM U.S. INLAND POINTS

1982	Imports	1,058,701	LT	value	$2,270,984,000
	Exports	1,195,193	LT	value	$1,976,523,000
	Total	2,253,894			$4,247,507,000
1983	Imports	1,226,030	LT	value	$3,004,681,000
	Exports	1,115,570	LT	value	$2,072,988,000
	Total	2,341,600			$5,077,669,000

Preliminary indications are that 1984 cargo diversion figures will show yet another marked increase. 1984 data, however, has not been verified at this time.

The reason for the diversion is primarily cost. In some instances Canadian ports may be selected because of reduced total transit time, but the main reason is cost of transportation. Since the Canadian routing has proved successful in the past at an ever increasing pace, no new paths need be invented to move more U.S. cargo through Canadian ports. It will only be a matter of time before Mexican ports enjoy U.S. cargo. The .04 percent ad valorem tax can only speed up the diversion of U.S. cargoes away from U.S ports to the further detriment of NAS member companies, their employees, and other port related employers and labor.

An additional adverse impact could arise from attempts to assess the .04 percent ad valorem tax on Canadian cargo that moves through U.S. ports. Canadian shippers might very well discontinue using U.S. ports and insist on their cargo being loaded or unloaded at Canadian ports. More cargo lost from American ports - and less cargo to be assessed the ad valorem tax.

The NAS views the proposed ad valorem tax as an administrative nightmare which, in its present form, is unconstitutional as to exports, and which will cause a reduction in the amount of waterborne commerce moving through U.S. sea ports. Its impact on inland river barge lines and terminals can only be measured by the diversion of more cargoes from barges to railroad and truck. Barge lines and inland marine terminals will be adversely affected as well. For what purpose? Is it worth it to raise $140 million annually to disrupt the nation's transportation system? We think not, and we urge the Finance Committee to reject the .04 percent ad valorem "user fee" - tax completely.

STATEMENT OF
THE NORTH AMERICAN EXPORT GRAIN ASSOCIATION, INC.
WASHINGTON, D.C.

BEFORE THE

SENATE COMMITTEE ON FINANCE
ON SENATE BILL 1567

SEPTEMBER 18, 1985

The North American Export Grain Association is an organization comprised of 38 of the leading exporters of U.S. grains. Its chief goal is to expand U.S. grain exports to the greatest extent possible and it is, therefore, vitally concerned with anything which affects the cost of grain as it moves into export. We are very pleased to have an opportunity to comment on Bill S-1567 as it receives consideration from this Committee.

We note that this Bill would propose various water projects for the nation and would establish certain user's fees to help pay for them. Under certain circumstances this would appear to be a good source for obtaining revenue, but under current circumstances it would be extremely harmful to agriculture and, therefore, the nation. We should, therefore, like to caution the Committee on the use of this concept in this instance.

There is no worse time financially in agriculture than the present. The new crop reports indicate, furthermore, that the situation is not improving, with forecasts of record harvests of some commodities and bumper crops of others. Those of the members of the Committee with an agricultural constituency realize that agriculture is in an almost life struggle. Even those without an agricultural constituency realize that agriculture is having a very difficult time of it. We cannot recall any period within at least the past twenty years which have been so challenging to a farmer, and the outlook for at least the immediate future---that is, for at least from three to five years---is that the situation could actually become even worse. This would make it then a very difficult time to impose on agriculture any additional burdens, even one which would appear to be so small as a .04 percent fee on the value of any shipment incoming or outgoing. This fee could easily amount to $1,000.00 per vessel when loaded with grain, and it is a cost which would be impossible for an exporter to pay from what appears to be a non-existent margin of profit. The best the exporter would be able to do would be to pass the cost on in either one of two directions: he either passes it on to the buyer in the event he is dealing in a seller's market, and at the present time it is obviously not a seller's market. Or he must then pass the added cost on to the original seller, which in this instance is the farmer, already battling for his existence financially with falling prices and increased inventories. It is obvious that if an attempt were to be made to exact this price from a buyer it would only serve to place U.S. grains, already overpriced in today's world, at an even greater disadvantage. This would result in less potential for a sale and increase the U.S. grain inventory and the problems this causes, both financially and logistically.

In such an instance the Government would be working against itself, to the detriment of itself, agriculture and the nation. At a time the United States continues to suffer from a huge trade imbalance it would do the nation a great disservice to worsen the U.S. balance of trade and payments through the imposition of a fee which would serve further to prohibit U.S. exports because of the cost of its products. The current difference between the price of U.S. wheat and those of similar quality from Argentina and the European Community has been quoted as about $30.00 per ton.

The only other recourse is to encourage the farmer to accept less for his grain, and this the farmer is not in a position to do---even if he were to be willing.

We strongly urge the Committee, therefore, to discard the concept of a user's fee for agricultural exports, since this would strongly work against the best interests of the nation's farmers and, in fact, the entire national economy.

We would also urge the Committee, just as strongly, to consider the individual items which it proposes on which work is to be done, to determine whether or not they are absolutely essential. If, in fact, they are found to be essential, the Committee should then strongly recommend that since they are in the interests of the entire nation they should be financed in taxpayer funds. These would constitute the contribution of the entire nation and, therefore, a far larger group, making payment much less painful than from fees to be paid only by a selected few.

We appreciate the opportunity to present our views before this Committee and would be pleased to meet with the Committee and/or any member of the Committee to discuss this issue further if it should be deemed necessary.

Pacific Basin Development Council
Suite 325 ◦ 567 South King Street ◦ Honolulu, Hawaii 96813
Telephone (808) 523-9325 ◦ Telex 743-0668

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President

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American Samoa
Vice President

Governor Pedro P. Tenorio
Commonwealth of the
Northern Mariana Islands
Secretary

Governor George R. Ariyoshi
Hawaii
Treasurer

COPY

August 23, 1985

THE HONORABLE SPARK M. MATSUNAGA
United States Senate
109 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Matsunaga:

We, the Board of Directors of the Pacific Basin Development Council (PBDC) and individually representing our respective Islands, are writing to express our grave concerns about the application of the proposed port user fee and harbor development cost recovery concepts to the U.S. insular areas. The harbors and our shipping networks are the lifelines of our American Pacific Islands. If something is not made out of air, coral, lava, water, or semi-tropical plants, the chances are good that it or its components must be imported.

We do not enjoy the alternatives of railroads or trucks available on the continental U.S.; our ports and surface transportation systems are the only cost efficient means to transport these goods we need in our daily lives. About 98% of our imports come by ship to our Islands. Our harbors are used up to 11 times more per Island man, woman, or child than the West Coast ports are utilized by its immediate communities. We import between 4-7 times the amount we export, unlike most of the other American ports who generally export more than they import. Much of this difference is in our importing of consumable goods. The real beneficiaries of our harbors are each and every one of our residents, not simply the businessman or commercial importer.

Herein lies our major problem with the user fee concept. The ad valorem tax is intended to recover some Federal costs from the select users of specialty services or facilities. In most parts of the country, the port user fee concept would have this intended effect. However, in our Islands, the net result would be a new, significant tax burden for every single resident who bears an already larger burden of transportation costs.

For example under the 0.04% ad valorem tax proposal, Guam residents will pay $600 per year for paper bags, paperboard boxes, and containers used on the Island. The region's oil products will cost an additional $1.1 million in port tax annually. American Samoa's tuna industry will incur about $70,000 in additional annual taxes. Hawaii's sugar and pineapple industries face an ad valorem bill of about $200,000 per annum.

The cost recovery proposals place an inequitable burden on our U.S. Pacific Islands. According to U.S. Army Corps of Engineers figures, our average annual Federal cost for operations and maintenance is about $1 million. Our calculations show that the 0.04% ad valorem collections would amount to about $3.3 million annually, or 300% the Federal O&M expenses. At the 40% recovery of Federal costs level, the American Pacific Islands would be contributing close to 850% of the intended local share. If the annual U.S. Customs duties are included in the national O&M fund, the Pacific Islands region would be taxed at a rate of about 43 times the Federal expenditures.

We in the Pacific endeavor to play an active role in advancing America's interests in the Pacific, but our unique Island economic situations must be more clearly understood and recognized in the framing of public policy. We feel strongly that our country's interests would not be well served by application of cost recovery from the Islands. At this particular time, implementation of the port user fees, harbor development cost sharing, and the proposed reduction of tax exempt revenue bond financing capacities would serve to limit our ability to build and maintain our vital harbor systems. Additionally, our efforts to advance such national priorities as international trade, economic growth, tourism, privatization, deficit reduction, and military security would be greatly hindered. Instead of fast tracking harbor development and shipping industry development in the Pacific, we believe that port development would likely be slowed, ocean freight costs will increase, and the Island communities and peoples will pay dearly, in cash and other costs.

We urge your serious consideration of our unique Island status in your national policymaking process. We respectfully request an exemption of our Pacific harbors from port user taxes and harbor development cost recovery provisions. Our seaports and shipping networks are our lifelines; they are vital factors in the daily lives of our peoples and are imperative to our national roles in the Pacific-Asian region.

We have taken the liberty of providing some detailed analysis for your review and use. If you or your staff have any questions, please do not hesitate to call Jerry Norris, our PBDC Executive Director, at (808) 523-9325; he will be most happy to provide any additional information and to further discuss any technical questions that might arise.

Respectfully,

RICARDO J. BORDALLO
President and
Governor of Guam

A.P. LUTALI
Vice President and
Governor of American Samoa

PEDRO P. TENORIO
Secretary and
Governor of the Northern
Mariana Islands

GEORGE R. ARIYOSHI
Treasurer and
Governor of Hawaii

PBDC/cki
ENCLOSURE

STATEMENT OF

PETER J. LUCIANO
EXECUTIVE DIRECTOR
TRANSPORTATION INSTITUTE

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

SEPTEMBER 10, 1985

Mr. Chairman and members of the Committee, my name is Peter J. Luciano. I am Executive Director of the Transportation Institute, a nonprofit research and education organization dedicated to the preservation and promotion of a strong American maritime industry. Our 174 member companies operate U.S.-flag vessels in virtually every sector of the U.S. maritime industry, including operators of oceangoing vessels in the nation's foreign trade; coastal and noncontiguous tankers, liners, tugs, and barges engaged in domestic commerce; Great Lakes dry bulk vessels and tugboats; and inland river towboats.

We appreciate the opportunity to again submit our views to the Finance Committee on an issue of critical importance to the many and diverse marine operators which the Institute represents.

Last year we submitted a statement to this Committee expressing our concerns with certain provisions in S. 1739, the water resources legislation then under Senate consideration. Specifically, we outlined our objections to a provision in S. 1739 which would allow deep-draft ports to impose user fees to recover their local share of improvement and maintenance expenditures for the portion of a channel deeper than 45 feet on vessels not requiring channel depths in excess of 45 feet. We urged this Committee to adopt an amendment to S. 1739 which would ensure that deep-draft ports be prohibited from imposing user fees for the portion of a channel in excess of 45 feet on vessels not requiring a channel depth of more than 45 feet. The Institute felt that such an amendment would fairly place the user fee burden where it belonged, on the direct beneficiaries of such project improvements, and would avoid unfair taxation of those who do not benefit.

Mr. Chairman, today this Committee is here to consider the taxing provisions of yet another water resources development bill, S. 1567. The Institute appreciates this Committee's concern with the direction of this proposal, and we are pleased that you have sought and secured jurisdiction over certain sections of S. 1567. Although the Institute has broad reservations with many provisions in this bill, I will confine my comments to our concerns with section 606, which allows non-federal entities to impose fees on vessels in commercial transportation to recover the non-federal share of project costs, and section 813, which establishes a national ad valorem fee on commercial cargo loaded or unloaded at American ports.

However, before specifically addressing these two sections of S. 1567, I feel compelled to comment on the Institute's opposition in principle to the non-federal contribution for the operation and maintenance and construction of general cargo harbors required by S. 1567. The Institute continues to believe that both the operation and maintenance and new construction of general cargo harbors under 45 feet should totally remain a federal responsibility. Given the fact that the nation is wholly dependent on these general cargo harbors as the conduit for 95% of our foreign trade and a significant portion of domestic commerce, we believe it is unwarranted that local entities be required to fund part of the cost of channel O&M or improvements. General cargo harbors provide an important contribution to many sectors of the economy as well as to our national defense. The Institute believes that despite Congressional efforts to reduce the federal deficit, the benefits to the nation as a whole from these harbors are so considerable that it is in the national interest for the Congress to continue their full federal funding.

Notwithstanding this widely-held view, it appears that the desire to enact a significant water resources bill this year has prompted the inclusion of provisions requiring non-federal interests to contribute to the costs of construction and operation and maintenance of general cargo harbor projects. Therefore, I will not dwell on our serious opposition to user fees for general cargo harbors, but will instead focus on the need to amend sections 606 and 813 of S. 1567 in order to minimize their potential damage to U.S.-flag carriers.

THE NEED TO AMEND SECTION 606

Last year, we urged this Committee to amend S. 1739, predecessor to S. 1567, so that deep-draft ports could impose user fees to recover their share of improvements and O&M expenditures for the portion of a channel deeper than 45 feet only on those vessels requiring channel depths in excess of 45 feet. We pointed out at that time that allowing a deep-draft port to impose user fees for the portion of a channel in excess of 45 feet on vessels not requiring these channel depths ignores the underlying tenet of user fees, namely, that under any equitable user fee regime for deep-draft port improvements and operation and maintenance, the direct users and beneficiaries of the project should be those charged the user fees. We also noted that because of significant overtonnaging and the intense competition in most U.S. foreign and domestic trades, vessel operators simply do not have the flexibility to pass on user fees, and would be forced to absorb most, if not all, port user fees, especially for projects from which they receive no benefit. This Committee shared our concern that the nonbeneficiaries not be taxed for port deepening projects greater than 45 feet, amended the bill, and provided in Senate Report 98-509, accompanying the legislation that:

> ... Any appropriate non-Federal interest which has constructed, maintained, or funded any project may submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives proposals and recommendations for legislation which would authorize such non-Federal interests to collect fees for the use of such project by vessels in commercial waterway transportation. The committee anticipates that consideration of any such user fee proposal would include an examination as to whether there would be a reasonable relationship between the types and amount of fees proposed and the differing classes and types of user which directly benefits from the expenditures of the fees collected.

Section 606 of S. 1567, as reported by the Environment and Public Works Committee, authorizes non-federal entities to collect user fees from vessels engaged in commercial transportation to recover the non-federal share of all new construction projects and the incremental operation and maintenance of deep-draft port projects. Unfortunately, despite this Committee's action last year, S. 1567 fails to include a strict beneficiary test, instead stating that the fees imposed "...shall reflect to a reasonable degree the benefits provided by the project to a particular class or type of vessel..."

Although we appreciate the implicit recognition by the Environment and Public Works Committee regarding the linkage between beneficiary and fee, the language of this section does not assuage our concerns that deep-draft ports would be permitted to recover their cost share for port deepening on vessels not utilizing the greater channel depth. Allowing local ports to tax nonbeneficiaries ignores the fundamental premise of user fees that the direct users and beneficiaries of a project should finance its development. There is no question that deep-draft ports greater than 45 feet will serve as special purpose projects for specific bulk commodities, particularly coal. Therefore, it is on those clearly identifiable and direct beneficiaries of such deep-draft port development where the user fee should be solely imposed. We urge the Finance Committee to amend the language of section 606 of S. 1567 to ensure that the nonbeneficiaries of deep-draft projects be protected from unfair and unwarranted taxation.

S. 1567 also provides ports the authority to impose local user fees for new construction projects in shallow and general cargo harbors. We urge that a beneficiary standard similar to that which we propose for deep-draft ports also be incorporated for shallow and general cargo harbors. We are concerned that nonbeneficiaries could also be compelled by local ports to pay for the non-federal share of port deepening projects of less than 45 feet under the excessive latitude which S. 1567 now provides. Our concern in this respect is not merely hypothetical. For example, it has recently been reported that the Port of Tampa expects the 10 year project to dredge its ship channel to a standard depth of 43 feet from its previous 34 foot depth to be completed before the end of the year. The principal reason for dredging to this depth is so that a few dry bulk vessels, mostly phosphate carriers, can leave the port fully loaded. Clearly, the beneficiaries of this increased channel depth from 34 to 43 feet are a small, easily identifiable group. The Institute believes it is simply unfair and unjustified to allow a port to impose user fees on a vessel serving a shallow or general cargo harbor to recover the local cost share for new construction projects which that vessel cannot utilize and from which it receives no benefit. As presently drafted, however, S. 1567 would not prevent a shallow or general cargo port from imposing user fees on vessels which cannot utilize the new channel depth.

We believe the danger that nonbeneficiaries will be charged for incremental port improvements they neither require nor can use is as great at general cargo harbors as it is for deep draft ports. Indeed, the irony of the project nearing completion in Tampa is that it will actually result in a decline in overall phosphate vessel traffic given the additional tons per shipload allowed by the deepened channel. Were this project subject to the cost sharing provisions of S. 1567, the port would surely seek to increase the universe of vessels subject to the local user fee. Therefore, we believe a provision protecting nonbeneficiaries using shallow and general cargo harbors should be a fundamental part of any amendment to S. 1567 reported out of the Finance Committee.

A final concern we have with section 606 is that it would permit ports to collect user fees for the non-federal share of construction projects from the moment construction work is begun. As a matter of equity, we urge the Finance Committee to amend this section by clarifying that no user fees can be imposed on vessels to recover the non-federal share of construction costs until a project is commercially usable. Port projects frequently take many years to complete; the Tampa project referenced above was started in 1976. The Transportation Institute maintains that it is inequitable to charge identifiable beneficiaries a "user fee" in advance of their use of a project.

THE NEED FOR TECHNICAL AMENDMENT TO SECTION 813

With respect to Section 813, which establishes a national .04 percent fee on commercial cargo loaded or unloaded at American ports, the Institute urges that the language of the bill be amended to reflect the intent of the Environment and

Public Works Committee that the cargo interests, and not the carrier, pay the ad valorem fee. In its report accompanying S. 1567, the Committee on Environment and Public Works states that "The tax in title 8 is not on the harbor, nor is it on the vessel's operator or owner. The tax is set on the value of the cargo, and is to be paid by the owner of the cargo, or his agent." However, we believe that the language of the relevant sections of S. 1567 does not clearly support the intent of the Committee report that the shipper, and not the carrier, be charged the ad valorem tax for harbor operations and maintenance.

We believe there are compelling reasons why the language of S. 1567 needs to be amended to ensure that the intent of the Environment and Public Works Committee is carried out. First, the ports of the nation facilitate the rapid and economical movement of cargo, not vessels. Vessels are merely the conduit for the movement of these cargo shipments. It is therefore appropriate that the owners of the cargo, for whom these ports are maintained, be the party which pays the fee. Secondly, under the ad valorem proposal, it would be difficult if not impossible for the carrier to pay the O&M fee since only the shipper knows the value of the cargo. Imposing the ad valorem fee on the carrier would result in a new and significant administrative burden as carriers attempt to determine the current values of the many commodities they may transport for many shippers.

Moreover, we believe it is equally important that such an amendment be clear that the vessel owner or operator has no involvement in or legal liability for the imposition, collection, administration, or disbursement of this fee. We are convinced that any administrative mechanism which places the carrier in the middleman position of serving as the government's agent in the imposition or collection process will be tantamount to imposing the fee on the carrier given the nature of the carrier/shipper relationship and the highly overtonnaged markets in which U.S.-flag vessels operate. The Transportation Institute suggests that an amendment be adopted which will clarify to the federal agency charged with promulgating the regulations to implement the law that the Congress considers it inappropriate that carriers serve as the administrative vehicle for the collection of these fees.

Finally, we urge the Finance Committee to add language to S. 1567 which ensures that cargo subject to the ad valorem fee be taxed only once. As reported by the Environment and Public Works Committee, S. 1567 contains no prohibition against multiple taxation or fee imposition. A prohibition of this nature is extremely important, especially with respect to domestic cargoes, which may move through several ports before reaching their final waterborne destination.

Mr. Chairman, once again, we appreciate your efforts in examining the fee provisions of S. 1567. Water resources development legislation has federal policy implications and operational impacts which extend far beyond the bounds of project construction and port operation and maintenance. We believe that this legislation will have a serious and potentially disastrous impact on the U.S. merchant marine. Consequently, we respectfully urge this Committee to seriously consider our suggested amendments to strengthen the beneficiary test for deep-draft and general cargo harbors and to ensure that the shipper, and not the carrier, pay the .04 percent ad valorem fee for harbor maintenance. We would of course be glad to work with this Committee in the resolution of these important matters. Thank you.